APPEAL NO. 001198

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 4, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the claimant timely reported his alleged injury to his employer; and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury and disability determinations are against the great weight and preponderance of the evidence. In addition, the claimant asserts error in the admission of one of the respondent's (carrier) exhibits. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the hearing officer's timely notice determination.

DECISION

Affirmed.

Because of the limited nature of the issues before us on appeal, our factual recitation will be limited to the facts most relevant to those issues. The claimant testified that from August 1999 to November 1999, he was working as a detailer for the employer and that his job duties required him to clean the inside and outside of trailer homes, getting them ready to sell. He acknowledged that he had returned to the light-duty position after having been off work for about six months because of left carpal tunnel syndrome (CTS). The claimant stated that beginning in October 1999, he began to notice that he had pain and swelling in his right hand and that his right thumb and forefinger were numb. He stated that he sought medical treatment with Dr. N, a chiropractor, who referred him to Dr. T for EMG testing. The claimant's EMG test of November 18, 1999, revealed mild right sensory CTS. In reports of January 11, 2000, and April 7, 2000, Dr. N attributed the claimant's right CTS to overuse of the right wrist and upper extremity at work.

The claimant testified that he was required to repetitively use his hands to clean the inside and outside of the trailers. On the exterior of the trailer, he used a bottle of alcohol and a towel to remove grease spots. Inside, he used a vacuum to clean wood chips and fiberglass out of the carpet. He stated that he had to grip the vacuum tightly and push down firmly in order to get the fibers and wood chips out of the carpet. He stated that his work also required him to use an air blower and a screw gun and that the pain, swelling, and numbness was worse whenever he had to use those tools and grip them firmly.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable repetitive trauma injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and

determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, the existence of an injury can be established by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving that he sustained a compensable repetitive trauma injury. A review of the hearing officer's decision demonstrates that he was not persuaded that the claimant engaged in repetitious physically traumatic activities at work in order to establish the causal connection between his right CTS and his work. The hearing officer was acting within his province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

In his appeal, the claimant asserts error in the admission of Carrier's Exhibit No. 2, a transcript of a recorded statement he gave to an adjuster, because he "had not seen or heard the tape before the hearing." The claimant did not object to this exhibit at the hearing on the basis of failure to timely exchange and, therefore, he did not preserve any error associated with the admission of that document.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge