APPEAL NO. 001251

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 8, 2000. With regard to the two issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury (to both wrists) on _____ (all dates are 2000 unless otherwise noted) and had disability from January 30 through the date of the CCH.

The appellant (carrier) appealed, asserting that the incident as described by the claimant could not have occurred, that its medical evidence was more credible than the claimant's medical evidence, that the claimant's medical evidence was "not reliable," and that the claimant was not credible. The carrier contends that the claimant did not sustain an injury and, therefore, did not have disability. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The appeals file does not have a response from the claimant.

DECISION

Affirmed.

The claimant testified that he sustained an injury to his wrists while manually pushing a trolley about 10 feet on _____. The trolley was described as being similar to a small railroad car, approximately 12 feet long, seven or eight feet wide with steel wheels which rolled on a track. The estimates on how much the trolley weighed varied from 5,000 to 48,000 pounds when loaded with manufactured cement fiber board. The hearing officer, in her Statement of the Evidence, refers to "a thousand pound trolley" but all the estimates were that it weighed considerably more than that. There was considerable testimony regarding whether there was an automated system in place to move the trolleys but apparently the claimant was using a manual system. There was also testimony that the trolleys could be moved manually using levers but that the levers had only been available for 10 days or so at the time of the claimant's injury. Although the employer's health and safety coordinator testified it was impossible for one person to move the trolley manually, he agreed three or four persons had routinely moved the trolleys in the past. The claimant testified that he immediately cried out when he was injured and that he wrapped his wrists with duct tape at the time and continued to work his shift. The claimant said that the following day he was unable to work, called in (reporting is not an issue), and went to BW clinic.

The BW clinic report dated January 30 included a comment that the claimant should "wear both wrist braces" (there was a dispute whether the claimant was wearing the braces when he arrived or whether they were prescribed at the BW clinic), and a diagnosis of "R/O carpal tunnel." The claimant said that he tried to follow up with his regular doctor but was unable to do so and returned to the BW clinic on January 31. A report of that day diagnosed bilateral wrist strain, instructed the claimant to wear wrist supports and put the

claimant on light duty until February 3. The claimant subsequently sought treatment with Dr. A, a doctor who had treated him for a prior back injury. In reports beginning February 3, Dr. A noted bilateral pain in wrists and hands and diagnosed carpal tunnel syndrome (CTS) and "crushing injury of hand(s)." Dr. A took the claimant off work in a note dated February 2. In a series of progress notes through April 3, Dr. A essentially repeated his findings.

Medical evidence to the contrary was presented by the carrier through the testimony of Dr. S, who did a record review only. Dr. S testified unequivocally that the claimant had not sustained an injury, that the claimant could not have CTS or a crushing injury based on the history, and that the mechanism of the incident does not support an injury. Dr. S's opinion was based, at least in part, on information that the claimant "waited a month after the initial injury to go see anyone about it." When it was pointed out that the claimant sought treatment the day after the incident and began treating with Dr. A four days after the incident, Dr. S refused to change her opinion. Initially, it was thought that Dr. S did not have all the records but subsequently it appeared that she had apparently not reviewed them all. The hearing officer commented that she did not find Dr. S's testimony "to be persuasive."

The carrier attacks the claimant's credibility in that the claimant had not disclosed a prior low back injury to the employer when he applied for employment and attacks Dr. A's credibility because he does not mention his prior treatment of the low back injury in the current reports dealing with a wrist injury.

In any event, the evidence is in conflict, even whether the incident occurred at all, the mechanics of the injury, and certainly the medical reports. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Where there are conflicts in the evidence, as there are here, the hearing officer resolves those conflicts and determines what facts have been established. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635

(Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. The fact that another fact finder could have drawn different inferences from the same evidence, which would have supported a different result, does not provide us with a basis to reverse the hearing officer's decision. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge