APPEAL NO. 001277

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 9, 2000. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury does not include injuries to the elbows. In her appeal, the claimant argues that that determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, "that caused pain and symptomalogy in [her] left upper extremity." The claimant testified that she was a key operator for the self-insured school district and that her duties required her to make copies and perform general maintenance on the copy machine. She stated that she was injured on _____, when she lifted three reams of paper and felt pain in her left upper extremity, accompanied by numbness and tingling in her left index finger.

The claimant initially sought medical treatment at a clinic, where she was diagnosed with a left forearm sprain/strain. The clinic referred the claimant to Dr. E, with whom she treated from May 11 to August 31, 1998. In his May 11, 1998, report, Dr. E stated that the claimant had a strain of the flexor pronator muscle group that has "produced some sort of pressure or symptomatology over the median nerve distribution which is responsible for current symptoms and physical findings." On June 16, 1998, Dr. E referred the claimant for nerve conduction velocity (NCV) studies, which were interpreted as normal in all nerves sampled. In his July 2, 1998, office notes, Dr. E stated that he "cannot totally explain this patient's symptomatology and correlate physical findings"; thus, he recommended that the claimant get a second opinion from Dr. D, a neurologist. In his July 29, 1998, report, Dr. E again stated that he did not know the source of the claimant's symptomatology because her diagnostic tests had been normal. In a July 8, 1998, report Dr. D stated that the claimant had persistent complaints of sensory changes in the first two digits of the left hand but opined that it was not carpal tunnel syndrome "based on the very normal NCV's done approximately two months post-injury." Dr. D recommended a cervical MRI and further stated that "[i]f [the MRI] is unremarkable I have no further recommendations."

On July 8, 1999, the claimant began treating with Dr. S. On August 27, 1999, Dr. S referred the claimant for repeat NCV testing and an EMG. That testing revealed "bilateral ulnar entrapment at the level of the elbow." In notes from a September 9, 1999, office visit, Dr. S diagnosed cubital tunnel syndrome and opined that this had been the claimant's "diagnosis from the first." He explained that he did a diagnostic block of the ulnar nerve at the elbow; that it had provided the claimant with about 95% pain relief; and that those results were "a very good sign that [claimant's] diagnosis is cubital tunnel and

hopefully that she will achieve this degree of pain relief including of some neck and shoulder pain following her surgery." In an October 1, 1999, report, Dr. S opined that the June 1998 NCV testing was "technically normal . . . , but suggestive of early cubital tunnel (especially in light of her later findings)." (Emphasis in original.)

On September 3, 1998, Dr. T examined the claimant at the request of the self-insured. In his report, Dr. T noted that the claimant's NCV and MRI testing was normal and that she "has no abnormalities on physical examination or diagnostic testing." Thus, Dr. T concluded that she "did not sustain any significant injury due to the event that occurred in April of 1998."

The claimant has the burden to prove the causal connection between her injuries to her right and left elbows and her compensable 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 her. 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. 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 her burden of proving that her elbow injuries were a result of her compensable injury. It is apparent from a review of her decision that the hearing officer simply was not persuaded that the claimant had produced sufficient evidence to demonstrate the causal connection between her compensable injury and any injuries to her elbows. The hearing officer was acting within her province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's extent-of-injury determination 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).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge