APPEAL NO. 001317

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 16, 2000. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to and include an injury to the cervical spine and that the claimant has not had disability as a result of the compensable injury. In her appeal, the claimant challenges those determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The parties withdrew an issue concerning whether the carrier timely contested compensability of the claimed cervical injury.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable repetitive trauma injury to her right shoulder and right wrist with a date of injury of _____. The claimant also contends that she sustained a cervical injury as a result of repetitive trauma. She testified that she performs data entry for production control for over 200 employees. She stated that she uses a calculator and a keyboard constantly and that she enters the data as part of inventory control all day. In addition, the claimant testified that she worked six to seven days per week and 50 to 55 hours per week. She stated that she believes that her cervical injury was caused by her constantly having to turn her head from side to side to look at the data sheets and then to look at her computer screen. She explained that her workstation was small; that her keyboard was in front of her at her workstation; that her monitor was to the left; and that she had to put the data sheets, from which she obtained the information to input, to the right.

Initially, the claimant treated with Dr. R, who diagnosed cervical and thoracic strain/sprains. Dr. R treated the claimant conservatively. He referred the claimant to Dr. S after conservative treatment failed to alleviate the claimant's symptoms. In a report from a July 26, 1999, visit, Dr. S diagnosed "right radiculalgia with some radiculopathy, mostly [sic] likely compatible with a C-6 nerve root involvement secondary to some degree of spinal stenosis with a herniated disc and lateral recess stenosis at C5-6, right more than left."

A June 8, 1999, cervical MRI was interpreted as demonstrating mild to moderate spinal stenosis at C5-6 with minimal cord compression, a broad disc protrusion at C5-6, and "mild narrowing of C5-6 neural foramina, osteophytic versus soft tissue disc bulge as etiology." On September 28, 1999, the claimant underwent a cervical CT scan which revealed mild spinal stenosis at C5-6 "secondary to osteophyte formation" and "no evidence of disc herniation or severe spinal canal stenosis."

Dr. S recommended an anterior discectomy with fusion and plating at C5-6. Dr. DS, the carrier's spinal surgery second opinion doctor, concurred in the recommended surgery. Dr. S performed cervical surgery and the claimant testified that it successfully alleviated her symptoms. In a March 13, 2000, letter to the claimant's attorney, Dr. S addressed the issue of causation as follows:

> [Claimant] was diagnosed with cervical radiculopathy, compatible with a C-6 nerve root involvement with spinal stenosis and a herniated disc. This condition was probably caused by repetitive motion trauma due to the patient's work duties in production control.

The claimant has the burden to prove that her compensable injury extended to a cervical spine 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. 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 she sustained a cervical injury as a result of the repetitively traumatic activities she performed at work. It is apparent from a review of the hearing officer's 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 an injury to her cervical spine. 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 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 success of the claimant's challenge to the hearing officer's disability determination is dependent upon the success of her argument that her compensable injury included a cervical injury. In light of our affirmance of the determination that the compensable injury does not include the cervical spine, we likewise affirm the hearing officer's determination that the claimant did not have disability as a result of her compensable injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Alan C. Ernst
Appeals Judge