APPEAL NO. 001548

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 June 8, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease (repetitive trauma) on _____ (all dates are 1999 unless otherwise noted), and had disability from October 23 to January 13, 2000. The appellant (carrier) appeals, contending that the claimant's testimony was not credible, that a performance report shows that the claimant exaggerated the number of calls she handled, that some of the claimant's diagnostic testing was invalidated, and the medical literature does not support that keyboarding can result in a compensable repetitive trauma injury. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds to the points raised by the carrier and urges affirmance.

DECISION

Affirmed.

The claimant was employed as a customer service representative for (employer). It is undisputed that the claimant's duties consisted of taking incoming calls and keying information into a computer. How many calls the claimant took, the length of these calls, and the amount of keyboarding required is in dispute. The claimant testified that she took 200 to 300 calls a day; an "Agent Performance Long Term Monthly Report" (performance report) for the months of January through October 21, as interpreted by the carrier, would indicate considerable fewer calls. The claimant testified that the performance report was not accurate. Ms. G, employer's employee relations administrator and a former customer service representative, testified giving her interpretation of the performance report but even she did not know what all the acronyms meant. Ms. G also conceded that there have been complaints that the performance report was not accurate. In response to a question of how much time during a call was spent keyboarding, Ms. G answered "It depends on the call." The evidence supported that the claimant spent seven and one-half hours a day, five days a week, answering calls and keyboarding information in the computer some percentage of the time.

The claimant testified that in October, she began to have pain in her hands and wrists and apparently reported a work-related injury on _____. The claimant first sought medical care from Dr. V on October 21. In a narrative report dated November 24, Dr. V recited his first consult with the claimant was October 21, indicated the claimant's duties as "repetitively using 10 key computer pad and other activities that intails [sic] repetitive motions," noted results of testing, and diagnosed "lesion" of medial and radial nerves, carpal tunnel syndrome (CTS) and a "closed dislocation of wrist." There are a number of other S.O.A.P. (Subjective, objective, assessment and plan) notes in evidence which recite much of the same information. Dr. V took the claimant off work on October 21, released the claimant to part-time (four hours a day), light duty on November 7 and the

claimant returned to regular duty January 13, 2000. Dr. V referred the claimant to Dr. N for further testing. Dr. N, in a report dated November 3, recited that EMG testing revealed "evidence of bilateral [CTS], early, acute, being worse on the left side than the right side." The claimant was also referred to a clinic for isometric grip strength testing. In evidence is a 63-page report, complete with charts, graphs, computer models and test results which the carrier contends shows that the testing was invalid because of symptom magnification. Also in evidence is a report dated May 25, 2000, from Dr. M, the carrier's required medical examination doctor, who concluded that his examination of the claimant on May 18, 2000 (four months after the claimant returned to work), showed no atrophy, no edema and the Tinel's test as negative with range of motion "grossly within normal limits." Dr. M found no evidence of median or nerve entrapment and concluded that "I see no causative factors to relate [the claimant's complaints] to her work injury or her work type." The carrier also offered six articles including among them "[CTS] Not Always Work Related," CTS as a repetitive motion disorder, and an Australian study, etc.

The hearing officer, in the discussion portion of his decision and order, commented:

> After reviewing all of the extensive medical documents, Claimant's and Carrier's Exhibits, I find that there is sufficient evidence that the Claimant sustained an injury to her wrists/hands and upper extremities caused by the work she was doing on her keyboard.
>
> I also base this on the testimony of the Claimant.
>
> Additionally, I note that although some of the medical notes indicate possibly a severe case of [CTS], looking at all the medical evidence in the case reveals that this is probably just a mild case of [CTS].
>
> Regarding disability, there is more than sufficient evidence that the Claimant sustained disability from October 22, 1999, to January 13, 2000.

The carrier appeals the hearing officer's decision, arguing that the claimant's testimony "was not believable," pointing to the performance report as contradicting the claimant's testimony of taking 200 to 300 calls a day, an employer study and various of the articles as showing that the claimant did not and could not have suffered a repetitive trauma injury. The carrier contends that the "claimant's work activities were neither repetitive or [sic] traumatic."

The evidence is certainly conflicting, with the claimant saying she took 200 to 300 calls a day and the employer's performance report showing fewer calls. Dr. V and Dr. N both diagnosed bilateral CTS and Dr. M concluded differently. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 medical evidence and judges the weight to be given to expert medical testimony. 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. 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). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the liability from common knowledge to find a causal basis. 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; Pool. 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. We find that the hearing officer's decision on both injury and disability to be supported by the evidence.

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:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge