

APPEAL NO. 001595

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 June 14, 2000. The hearing officer determined that the date of the respondent's (claimant) injury was _____, and that the claimant had disability from September 7, 1999, through November 22, 1999. The appellant (self-insured) appeals the adverse determinations, urging that the decision was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The self-insured also contended that the claimant did not prove that the 1999 injury is a producing cause of her current complaints and the claimant should have been proceeding under an aggravation theory because she had preexisting carpal tunnel syndrome (CTS). The claimant filed a response, contending that the evidence was sufficient to support the hearing officer's decision and order and that it should be affirmed.

DECISION

Affirmed as reformed.

We observe that the hearing officer did not enter a conclusion of law regarding whether the claimant sustained a compensable injury in the form of an occupational disease. She did, however, make a finding of fact that the claimant's CTS arose out of and in the course and scope of employment while performing data entry duties and did enter a conclusion of law that the claimant's date of injury was _____. We have previously held that a conclusion of law may be present by implication when another conclusion of law references the issue and the hearing officer's discussion of the evidence supports such a determination. See Texas Workers' Compensation Commission Appeal No. 92064, decided April 3, 1992. We, therefore, infer from Finding of Fact No. 3, Conclusions of Law Nos. 3 and 4, and the evidence that the hearing officer concluded that the claimant sustained a compensable injury in the form of an occupational disease and so reform the decision and order.

The evidence adduced at the CCH reflects that the claimant began working for the self-insured on September 8, 1998. The claimant testified that she worked as a computer data entry clerk whose duties were comprised solely of data entry and answering telephones which required the daily repetitive use of her hands and fingers to type in data using a computer keyboard. The claimant initially testified that she began having pain and numbness in her hands and arms in _____, which was corroborated by her answer to the self-insured's interrogatories reflecting the same information.

The claimant later testified and admitted that she had had CTS symptoms prior to working for the self-insured and had worn wrist splints while working for another employer. The claimant testified that as a result of her hand and wrist complaints, she presented to Dr. D prior to beginning her employment with the self-insured but could not recall when this occurred. The claimant admitted that she had pain in her hands between 1989 and 1995. The claimant testified that Dr. D told her that she probably had CTS but not to worry about

it and gave her pain medication which she took and the pain went away. The claimant testified that “as long as she didn’t diagnose me with it, then I have nothing to worry about.”

The claimant testified that she chose the date of _____, as her date of injury because on this date she decided that she needed medical attention for her hand and wrist pain because during the prior week she had pain in her forearms and cramping. She claimed she scheduled an appointment with a doctor (no name given) on September 7, 1999, but admitted that she did not attend the scheduled office visit.

Ms. I, the claimant’s supervisor, testified that the claimant began working for her in September 1998 and that during her interview for the job the claimant did not inform her that she had CTS. Ms. I testified that about a week before October 23, 1998, the claimant told her that she had CTS and requested a new chair, wrist splints, and an ergonomically correct computer keyboard which was subsequently requisitioned and purchased for the claimant in November 1998. Ms. I testified that after the equipment was given to the claimant, she made no complaints of having pain in her wrists and hands until she filed a claim for workers’ compensation benefits on September 7, 1999. The claimant denied having this conversation with Ms. I and stated that she merely asked for the equipment so she could prevent getting CTS because her mother had CTS.

Ms. I explained that on September 3, 1999, the claimant was called to Ms. I’s office where Ms. I told the claimant that she had been caught using her computer to access pornographic websites when she was supposed to be working. Ms. I told the claimant that this violation, in conjunction with her constantly being late for work, would require disciplinary action but that she would wait until they returned after the Labor Day holiday on the following Tuesday to inform the claimant as to what action would be taken. Ms. I stated that when they returned to work the following Tuesday, September 7, 1999, the claimant filed a claim for workers’ compensation. The claimant testified that she did not go back to work on September 8, 1999, and instead met with an attorney the same day who referred her to Dr. Ri, to whom she also presented on September 8, 1999. The claimant did not return to work until November 22, 1999, asserting that she had disability from September 7, 1999, through November 22, 1999.

A letter dated November 1, 1999, from Dr. Ri reflects that he examined the claimant on September 8, 1999, and that “[the claimant] has denied any previous symptoms.” Dr. Ri diagnosed the claimant with bilateral CTS and released the claimant from work. Another record from this date from Dr. Ri contains a statement that “the patient reported no significant or past medical history” and “the patient was at work entering data on the computer when she felt a sharp pain on both hands, arms, and neck areas.”

The claimant was subsequently referred to Dr. Ra, who, by letter dated September 15, 1999, indicated that he performed EMG and nerve conduction studies on the claimant’s upper extremities and neck. He concluded that she had bilateral CTS. Dr. Ra’s notes reflect that the claimant told him that she began noticing severe numbness in both hands while working on September 7, 1999, and “there is no history of trauma or injury.” There

is no indication in Dr. Ra's records that the claimant related any history of having pain in her hands prior to September 7, 1999.

A letter from Dr. S dated September 20, 1999, indicates that he examined the claimant on September 17, 1999, and diagnosed bilateral CTS. There is no personal history or family history given to Dr. S from the claimant reflecting that the claimant had previously experienced hand and wrist pain or that anyone in her family had experienced the same symptoms.

A letter from Dr. G contains a statement that the claimant told him that she began having numbness and tingling in both hands in September 1999 and that because she did not have any prior history, the CTS that she was experiencing was related to her activities performed for the self-insured.

The self-insured argued that because the claimant did not give any of these healthcare providers the correct information as to when she began having symptoms of CTS, their opinions as to whether the injury was sustained in the course and scope of employment should be disregarded. The claimant testified at the CCH that she told all of the doctors about her prior symptoms and treatment from Dr. D but she was told by the doctors that since she had not been tested for CTS and had not been given a diagnosis, "it wasn't pertinent." The claimant subsequently added that she stopped going to Dr. D because he would not respond to her complaints of pain.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The self-insured contended that the claimant did not prove that the 1999 injury was a producing cause of her current complaints and that the claimant should have proceeded under an aggravation theory because she had preexisting CTS. These arguments are without merit. The issue certified out of the benefit review conference was whether the claimant had sustained a compensable injury in the form of an occupational disease, not whether her 1999 injury was a producing cause of her current complaints. It was the claimant's choice as to what theory of recovery she pursued and she chose to assert that her CTS did not preexist her employment with the self-insured. The claimant had the burden to prove that she was injured in the course and scope of her employment. Whether the claimant was injured at work as claimed presented a fact question for the hearing officer to determine from the evidence presented.

Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge