APPEAL NO. 001676

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 26, 2000. The hearing officer determined that the respondent's (claimant) compensable injury extends to his right carpal tunnel injury and that the claimant had disability beginning on October 26, 1999, and continuing through October 28, 1999, and again beginning October 31, 1999, and continuing through the date of the CCH. The appellant (self-insured) appealed; contended that the hearing officer erred in making a finding of fact that it is common knowledge that carpal tunnel syndrome (CTS) is normally caused by repetitive trauma but it can also be caused by a single traumatic event; stated that medical evidence is required to establish that CTS resulted from a single traumatic event; argued that the evidence does not establish that the claimant sustained trauma to his hands, wrists, or arms; urged that the evidence is not sufficient to support the determinations that claimant's compensable injury extends to right CTS and that he had disability after April 5, 2000; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable injury does not extend to right CTS and that the claimant did not have disability after April 5, 2000. A response from the claimant has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence that includes quotations from medical reports of three doctors who treated the claimant. The claimant, a police officer, and a deputy sheriff subdued an intoxicated person on October 25, 1999. They wrestled; the law enforcement people attempted to get the person to the ground; and all three fell to the ground, with the claimant landing on his back and on the bottom. The self-insured does not dispute that the claimant injured his head, neck, and jaw.

The claimant was taken to an emergency room (ER). The ER records and testimony of the chief of police and a police sergeant who went to the ER do not indicate that the claimant complained about his shoulder, arms, hands, or wrists at that time. The claimant testified that the next day he was sore all over and that both arms were going numb. The claimant was seen by Dr. H, a chiropractor, on November 8, 1999, and was diagnosed with cervical radiculitis. Dr. H reported that the claimant's neck and upper back responded favorably to treatment but he continued to have great difficulty with his arms and hands. The claimant was referred to Dr. F and tests performed on December 16, 1999, suggested right CTS. In a report dated June 19, 2000, Dr. L, a hand surgeon, reported that the claimant did not remember his hand striking or hitting anything, but did remember using his hands to wrestle with the individual. Dr. H said that the claimant denied prior complaints of numbness or tingling with his hands and that he Dr. L thought

that the clinical symptoms and electrophysiologic findings are related to the compensable injury. Dr. L stated that the claimant's condition precluded satisfactorily handling a firearm.

The self-insured contended that the hearing officer erred in making Finding of Fact No. 7 that states "[i]t is common knowledge that [CTS] is normally caused by repetitive motion but it can also be caused by a single traumatic event." That finding of fact is subject to several interpretations and it is not clear whether the hearing officer found that it is common knowledge that CTS can be caused by a single traumatic event or that he found that CTS can also be caused by a single traumatic event. To decide the appeal, we need not determine what the hearing officer meant in making Finding of Fact No. 7. Rather, we look to other findings of fact that show that Finding of Fact No. 7 is surplusage. The hearing officer made the following findings of fact:

FINDINGS OF FACT

2. On _____, Claimant was injured while subduing a suspect who was resisting arrest.

3. In the course of subduing the suspect, Claimant sustained trauma to his head, neck, jaw, and both hands and wrists.

4. Claimant reported numbness and tingling in his right wrist within two weeks of the incident of _____.

5. On December 16, 1999, Claimant underwent EMG/NCS studies to determine the cause for his persistent right arm numbness and tingling.

6. The EMG/NCS studies revealed the existence of mild right [CTS] but did not reveal any cervical radiculopathy which would account for the numbness and tingling.

7. [Previously set forth.]

8. In all reasonable medical probability, Claimant's right [CTS] is a result of trauma to the right upper extremity sustained while Claimant was subduing the suspect on _____.

9. As a result of the injuries sustained while subduing the suspect on _____, Claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from October 26, 1999 through October 28, 1999 and again beginning October 31, 1999 and continuing through the date of the hearing in this matter.

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). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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). An appeals level body is not a fact finder and it 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 would 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). There is no indication that the hearing officer did not properly apply the law. Findings of Fact Nos. 2, 3, 4, 5, 6, 8, and 9 are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). The affirmed findings of fact sufficiently support the conclusions of law concerning extent of injury and disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge