APPEAL NO. 001836

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 July 14, 2000. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) compensable low back injury of _____ (all dates are 1999), does not extend to her neck and right shoulder. Although not appealed, we note that the decision portion of the hearing officer's decision states that the "_____ compensable injury does extend to her neck and right shoulder." This is obviously a typographical omission of the word "not" and we reform the hearing officer's decision to conform with the Statement of the Evidence, Findings of Fact, and Conclusions of Law that the compensable injury "does not extend" to the neck and right shoulder. The claimant appeals, contending that the medical evidence of her doctors proved that her compensable injury extended to her neck and shoulder complaints and that the "carrier [respondent] did not present any evidence of a doctor to refute my position." The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier responds, urging affirmance.

DECISION

Affirmed, as reformed.

The claimant was employed on an assembly line building frames for cars. By way of background information, it appears that she sustained some kind of neck and/or shoulder repetitive trauma injury in February. The claimant testified that this was just "soreness" and that she did not assert a claim for that "soreness." On _____, apparently two events occurred; in one, the claimant said she was "reaching into the cage trying to get some frames out . . . when [she] felt the pain that shot up [her] back all the way . . . up [her] neck." The claimant further testified that "[a] little bit later, approximately 15 minutes . . . I was going to get some glue to fill up my glue machine . . . [and] a pain just shot in my back and I couldn't hardly bend over. . . ." The carrier has accepted liability for a low back injury on _____. The claimant's employee accident report form dated June 30 only references right low back complaints.

The claimant was sent to a medical clinic (clinic) by the employer on June 30. The claimant received conservative treatment and was released from care on July 23. The claimant subsequently began treating with a doctor's group which included Dr. R; Dr. O; and Dr. C. In a report dated August 13, Dr. R writes:

> [The claimant] gives a history of two separate injuries. (1) Regarding her right wrist, her neck and arm pain, these symptoms are secondary to repetitive motion-type injury which she first noticed approximately 2/15/99. Her job requires her to use a rivet gun and repeated motion with a glue gun. She states the symptoms have become progressively worse. . . . She also noticed approximately one week ago a sudden onset of neck pain which

> radiated to her right upper extremity. She feels that this is quite possibly due to the compromising of her right arm and wrist due to her previous symptoms. She noticed this while lifting a frame and glue. She has visited the [clinic]. She did this on 6/30/99 [a markover indicates 6/29/99]. She was unhappy with the care she received and she therefore has sought treatment in our clinic. (2) She also presents today complaining of low back pain radiating to the right lower extremity. This is secondary to a work-related accident which occurred on 6/30/99 [a markover indicates 6/29/99]. She states once again she was lifting a frame with glue and notice[d] a twinge in her back. This later become [sic] so severe that she was unable to work the next day.

This history is essentially repeated in a report also dated August 13 from Dr. O. Dr. O, in a report dated August 17, wrote:

> After reviewing [Dr. R's] history with [the claimant] in order to correlate treatment and care, the patient corrected me on one part of [Dr. R's] history. She stated that her old injury from _____, she just had right wrist and right arm pain. She never had neck pain. The patient stated that on June 30 when she lifted the frame with glue, that is when she experienced the pain in her neck and her back. The only corrections to [Dr. R's] note would be from that lifting incident on 6/30/99 [a markover indicates 6/29/00], she did experienced [sic] neck pain at that point, not from the previous injury.

There are numerous other reports in evidence from Dr. R, Dr. O, and Dr. C associating the neck and shoulder complaints to the low back injury. Dr. O testified at the CCH, essentially repeating the history given in his August 13 report, that, in his opinion, the claimant suffered a soft tissue shoulder and neck injury on _____ lifting a frame and glue gun.

The hearing officer, in her Statement of the Evidence, commented that she "did not find [Dr. O's] testimony persuasive"; noted some inconsistencies between Dr. O's reports and the claimant's testimony; and concluded that the claimant had not sustained a neck and right shoulder injury in addition to a low back injury on _____. The claimant appeals, pointing to the reports of Dr. R, Dr. O, and Dr. C and asserts that the carrier had failed to present any medical evidence to the contrary ("refute my position").

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). Credibility was an issue and the hearing officer resolved that issue against the claimant. The claimant had the burden of proof and the carrier was not required to submit medical evidence to refute the claimant's claims. We have also noted that a fact finder is not bound by medical evidence which is dependent on the credibility of the history or information imparted to the doctor by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.).

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, as reformed, and order of the hearing officer are affirmed, as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge