APPEAL NO. 001851

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 11, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, did not extend to include the neck, left shoulder, left arm, left elbow, left wrist or her current carpal tunnel syndrome condition (CTS) and that the claimant did not have disability as a result of the compensable injury from August 28, 1997, through September 11, 1997. The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient to affirm the determinations.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her left hand on _____. In controversy was whether the compensable injury extended to her neck, left shoulder, left arm, left elbow and left wrist and to her current CTS condition. The claimant testified that she worked full-time for the employer on _____, as a data entry clerk and had been assigned to different banking locations throughout her employment. Her duties required her to enter data into a computer using a keyboard to type in the information and some light lifting. The claimant denied having any problems with her neck, left shoulder, left arm, left elbow, left wrist or hand prior to being hired by the employer. The claimant stated that she did not feel any symptoms until about a week or month prior to _____, but that on this date the pain became excruciating when she had to pick up an item weighing between 10-15 pounds. She admitted that about five years prior to her employment with the employer she had been diagnosed with CTS in her right hand and wrist, but denied that she had any problems with the right hand while working for the employer. The claimant stated that she reported a left hand, arm and CTS injury to the employer the next day and subsequently on August 21, 1997, sought the services of Dr. W, who had treated her for the right CTS and other injuries since the 1980's.

The claimant stated that she told Dr. W she had pain in her arm, hand and thumb and that her shoulder was sore. The claimant testified that after _____, she missed "two or three weeks" of work, then returned for a two-day assignment and did not work anymore because the employer never called her for any more assignments. She stated that Dr. W gave her a work release on August 28, 1998, but she felt she was capable of working and did not do so because the employer did not offered her any more assignments. The claimant continued treating with Dr. W until September 11, 1997, when she was released to return to work. Although the release did not contain a lifting restriction, the claimant contended that she was restricted to no lifting with her left hand. The claimant admitted she went to work as a typing/data entry clerk for three other employers after September 11, 1997, because of her financial situation. She described the

data entry/typing jobs as the same type of work. The claimant testified that she was off work for other periods of time after September 11, 1997, but could not recall specific dates.

The claimant testified that she returned to Dr. W on August 12, 1998, because about a week before, while performing data entry work, her left shoulder became unbearably painful. The claimant received treatment at a local hospital and was released with instructions to see her family physician. The claimant asserted that this pain was the same as that from _____. Hospital records reflect that the claimant was treated on July 7, 1998, for a sudden onset of bilateral shoulder and neck pain. An EEG was normal and the claimant was discharged with a diagnosis of bilateral shoulder myalgia.

The claimant testified she understood that she had a left shoulder impingement syndrome which was causing pain in her neck and she related this condition to her injury of _____. She also testified that she had CTS in her left wrist which was causing pain in her shoulder, neck and arm. The claimant stated that she couldn't remember having any injuries to her neck or shoulder from several motor accidents that she was involved in prior to _____.

The claimant offered various medical records from Dr. W beginning on August 21, 1997, which reflected that the claimant presented to him with complaints of left hand pain, numbness and tingling and that she demonstrated Tinel's and Phalen's sign which were questionably postive for CTS. Dr. W noted that the claimant had left shoulder and neck pain with muscle spasms in her neck and a C-6 dermatome irritation. He speculated that the claimant did not have CTS but possibly a double crush syndrome from a ruptured disc at C5-6. Dr. W wrote that he would continued the claimant working but the employer did not have any work for her on August 28, 1997. However, the record also contains a work-release slip issued to "whom it may concern," that the claimant was taken off work from August 28, 1997, to September 11, 1997. By September 4, 1997, after a wrist MRI and shoulder x-rays essentially demonstrated normal findings other than osteoporosis in her left shoulder, Dr. W diagnosed the claimant with a cervicothoracic spine, left shoulder and left wrist sprain based upon her subjective complaints of pain and noted that she was improving. On September 11, 1997, Dr. W noted that the claimant's left shoulder had full range of motion and that her neck "was fine." The claimant was returned to work with no restrictions.

After working for several other employers during the interim, the claimant returned to Dr. W about a year later on August 12, 1998, for complaints of left wrist and left shoulder pain. Dr. W diagnosed the claimant with CTS in the left hand/wrist and mild osteopenia and osteoporosis in the left shoulder with some impingement due to ostephytes. No follow-up records were offered.

On August 13, 1999, the claimant returned for medical treatment of her left hand because she had lifted some boxes at work. Dr. W wrote that the incident caused the claimant to strain her left hand and have a flare-up of her CTS resulting in pain in her left wrist, elbow, shoulder and neck. Another MRI was performed on her left wrist which

suggested CTS and the diagnosis was confirmed with EMG/nerve conduction studies. The studies demonstrated no evidence of cervical radiculopathy. Dr. W attributed all the subsequent wrist, neck, elbow and shoulder problems to the injury of _____. According to his records, Dr. W believed that the claimant had continued working for the employer and was not aware of the interim employers. At the CCH the carrier asserted that the employer on the date of the last injurious exposure should be liable for the claimant's repetitive trauma injuries.

Medical records from Dr. W dating back to 1989 reflect that the claimant was treated for a cervical sprain and impingement syndrome in both shoulders relating to an automobile accident on October 6, 1988. After another motor vehicle accident in April 1994, the claimant was treated by Dr. W for a cervical sprain with radiculopathy, but a CT scan indicated no herniations.

A peer review was prepared by Dr. M on September 6, 1998, at the carrier's request. Upon review of the claimant's medical records, Dr. M opined that there was no objective evidence on physical examination to support a diagnosis of CTS or cervical radiculopathy in August 1997.

The claimant had the burden of proving by a preponderance of the evidence that her compensable injury of _____, extended to include the neck, left shoulder, left arm, left elbow, left wrist and her current CTS condition. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The claimant presented her claim on a theory that her injuries were sustained as a result of repetitive trauma. Section 401.011(36) defines a repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's capacity. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

Section 406.031(b) provides that the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee. The hearing officer determined that the claimant failed to establish through credible testimony or medical evidence that her work duties for the employer resulted in a repetitive trauma injury to her cervical spine, left shoulder, left wrist/elbow or left arm and left CTS condition. She also found that by August 1998, after the claimant left employment with the employer, the claimant did have objective medical evidence of a left CTS injury, but that the employer in the present case was not the last place of injurious exposure. The hearing officer was also free to believe that the claimant did not have disability from August 28, 1997, through September 11, 1997, because the claimant testified that she was capable of working during this time and the work releases and records from Dr. W were conflicting as to this issue.

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. 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 it does not normally pass upon the credibility of witnesses or substitute its own judgement 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). 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

Robert W. Potts
Appeals Judge