APPEAL NO. 002021

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 August 7, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury and that the claimant did not have disability because she did not sustain a compensable injury. In her appeal, the claimant argues that the hearing officer's determinations are against the great weight of the evidence and asks that we reverse the hearing officer's decision and render a new decision in her favor on both issues. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was assigned by (the employer) to work for a client company as an assembly line worker on an ironing board assembly line. She stated that she had to reach overhead to get the ironing board legs and place them into a machine, which put screws in the legs. The claimant testified that she processed a pair of legs every 15 seconds, and that she worked eight hours per day, five days per week. She stated that on _____, she developed pain in her left hand and wrist and that the more she used her hand, the worse the pain became. She testified that she eventually developed a bump on her wrist and she was no longer able to move her hand on _____ and that as a result, she called Mr. R, her supervisor with the employer, and reported her injury to him. The claimant maintained that Mr. R advised her to keep working and not to tell anyone at the client company about her injury because her employment would be terminated. The claimant acknowledged that she had previously worked for 11 months packing auto parts on an assembly line for another employer; however, she insisted that she did not have any problems with her left wrist/hand prior to _____. The claimant further testified that on April 5, 2000, she called Mr. R again and told him that she could not continue working and that Mr. R told her that she could go to the doctor but that her employment would be terminated.

Ms. H testified that at the time of the claimant's alleged injury she was the metal supervisor for the client company where the claimant had been assigned to work by the employer. Ms. H stated that the claimant worked from March 27 to April 5, 2000, and that during that time it was brought to her attention on more than one occasion by the claimant's coworkers on the line that there were problems with her leaving the assembly line to use the rest room, where she stayed for 10 to 15 minutes at a time. In addition, Ms. H stated that the front lead on the assembly line also reported that there were repeated instances that the claimant had conversations with her cousin, which also resulted in a slowing of the production line. Ms. H stated that on April 5, 2000, she had a conversation with the claimant about her frequent use of the rest room, asking if she had a problem that necessitated her frequent, extended use of the rest room. Ms. H stated that the claimant

became angry and belligerent during the course of that conversation and the claimant indicated that she was going to quit her employment. Ms. H testified that the claimant stated that her hand was sore in that conversation but that she did not report that she had injured her hand at work.

Mr. R testified that he is the personnel supervisor for the employer and that he did not learn that the claimant was alleging that she sustained a work-related injury to her left wrist/hand while working on the client company's assembly line until April 10, 2000. He acknowledged that the claimant had called him while she was working for the client company. However, he maintained that she did not tell him at that time that she had been injured; rather, she complained about not being permitted to use the rest room. Mr. R testified that the claimant came into the employer's offices after having walked off the job at the client company on April 5, 2000, but that she told him about the problems she was having with the supervisor about using the rest room and did not report an injury.

Initially, the claimant sought medical treatment with Dr. M. In a "To Whom it May Concern" letter dated June 16, 2000, Dr. M opined that the claimant sustained a repetitive trauma injury, left carpal tunnel syndrome (CTS), while working as an assembly line worker. Dr. M referred the claimant to Dr. D for a consultation. In an April 8, 2000, letter to Dr. M, Dr. D stated that the claimant sustained left CTS "secondary to a repetitive motion injury." Dr. D recommended that the claimant continue therapy with Dr. M and prescribed anti-inflammatory medication for the claimant. On June 9, 2000, the claimant underwent EMG/NCV testing. The report from that testing states "physical exam is consistent with DeQuervans [sic] Tendinitis. EMG is consistent with Carpal and Cubital Tunnel Syndrome on the left."

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts have been established. Texas Employers Ins. Ass'n 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. 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 manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that she sustained a compensable repetitive trauma injury. The hearing officer was not persuaded that the claimant engaged in sufficient repetitively traumatic activities during the course of her employment with the client company from March 27 to April 5, 2000, to establish the causal connection between her condition and her work. The hearing officer further noted that there was credible testimony that the claimant had walked

off the job on April 5, 2000, following a confrontation with Ms. H where the claimant's frequent, extended use of the rest room was discussed. As such, it appears that the hearing officer believed the claimant's claim was a spite claim. The hearing officer was acting within his province as the finder of fact in making the determination that the claimant did not sustain her burden of proving that she sustained a compensable repetitive trauma injury. Our review of the record does not demonstrate that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge