APPEAL NO. 002063

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 10, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of the alleged injury is _____; that the respondent (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely report his injury pursuant to Section 409.001; and that the claimant has not had disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The claimant testified that he has been working as a truck driver for eight years and that he has been working for his current employer since November 1998, driving a fuel delivery truck. The claimant stated that he sustained bilateral carpal tunnel syndrome (CTS) as a result of the repetitively traumatic activities he is required to perform at work. Specifically, the claimant maintained that he is required to connect the hose and fill the tank with fuel at the refinery; disconnect the hose and drive the truck to the delivery site; reconnect the hose and deliver the fuel; disconnect the hose and return to the refinery to fill the tank again; and make the next delivery. The claimant stated that the various hoses weigh between 20 and 50 pounds depending upon their size and that he is required to connect and disconnect a hose approximately 10 times per day. The claimant also testified that when he is driving the truck, he is constantly shifting gears and steering and that the steering wheel vibrates. On July 27, 1999, Dr. L performed EMG and NCV testing, which revealed bilateral CTS. The claimant testified that from April 5 to June 5, 2000, he was taken off work while he completed a course of physical therapy and that, thereafter, he returned to work for the employer.

The claimant had the burden to prove that he sustained a compensable injury in the form of an occupational disease. 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 a compensable injury. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the claimant sustained his burden of proving that the claimed repetitively traumatic activities he performed at work caused the claimant's bilateral CTS. The hearing officer was acting within his province as the finder of fact in so finding. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury 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. The fact that another fact finder may have drawn different inferences from the evidence, which would have supported a different result, does not permit us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge