APPEAL NO. 002124

Following a contested case hearing held on August 16, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) had sustained a compensable injury in the form of an occupational disease on _____, and had disability resulting from the injury from April 25, 2000, through May 22, 2000. The appellant (carrier) appeals the hearing officer's determinations, asserting that the claimant should have known that he had sustained an injury related to his employment before he sought medical attention, that the claimant's job activities do not constitute repetitious physical trauma, and that the hearing officer erred in giving credence to the treating doctor's reports and conclusions on the cause of the injury. No response was filed.

DECISION

Affirmed.

The claimant worked for (employer) processing defective computer parts. The claimant testified that his job consisted of gathering defective parts; retrieving the defective tag for the part and scanning it into the computer; packaging the part into a box with a shipping list; and then taping and attaching a shipping label to the box. This activity was performed with parts which ranged from an ounce or two to more than 100 pounds (the claimant testified some parts would weigh as much as 200 pounds). During the course of his employment, the claimant processed as many as 100 parts a day. However, it appears that at or near the date of the injury the workload had decreased and the claimant was processing between 30 and 70 parts a day.

The claimant testified that on or about _____, he felt a sharp, shooting pain in the back of his right shoulder. The claimant initially thought he had pulled a muscle, but the pain worsened over the next two weeks and the claimant sought medical treatment from Dr. V. The claimant first saw Dr. V on April 24, 2000. Dr. V diagnosed the claimant's condition as a closed dislocation of the wrist, carpal tunnel syndrome, a closed dislocation of the elbow, and rotator cuff syndrome of the shoulder and allied disorders. Dr. V took the claimant off work beginning on April 25, 2000.

After a course of treatment, the claimant was released to return to restricted duty on May 22, 2000. The claimant began working for the employer on May 22, 2000, but was asked to repeat a drug screen on May 23, 2000. The drug screen results were positive for marijuana use and the claimant was terminated by the employer, due to the positive drug test, on May 26, 2000. He then waited for approximately two weeks before seeking employment and, upon his initiation of a job search, he found full-time employment which complied with his work restrictions. As of the date of the hearing, the claimant continued to work for his new employer.

The carrier disputed that the claimant engaged in work activities which could be classified as "physical repetitious trauma" and could not, therefore, support the hearing officer's determination that the claimant had sustained an occupational disease.

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). A claimant's testimony alone may be sufficient to prove an injury. However, the testimony of a claimant is not conclusive and only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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). As the trier of fact, the hearing officer could credit the claimant's testimony that his work was repetitious. Dr. V did not, as asserted by the carrier, base his diagnosis and opinion on causation solely on the amount of keyboarding activity engaged in by the claimant. A letter from Dr. V states that the claimant packs and unpacks boxes at work and also does keyboarding. The hearing officer could, and evidently did, find that the claimant gave an accurate description of his job duties to Dr. V and that Dr. V had taken into account all of the claimant's work activities in concluding that the claimant's injuries were related to his employment. In a case such as the one before us, the hearing officer looks 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, 244 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 that the claimant's work activities were of a kind and magnitude to establish a causal connection between the employment and the injury, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The carrier also asserts that the hearing officer erred in finding disability in this matter. The carrier's assertion of error is predicated on the dispute of the hearing officer's determination that a compensable injury occurred. Since the hearing officer's determination that the claimant had a compensable injury is supported by the evidence, we find that her determination regarding compensability should be affirmed and that her determination of disability is also supported by the evidence and should be affirmed as well.

The hearing officer's decision in this matter is supported by the evidence in the record and we affirm the hearing officer's decision and order.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge