APPEAL NO. 002241

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 September 12, 2000. The issues at the CCH were whether the appellant/cross-respondent (claimant) sustained an injury in the course and scope of employment on _____, and whether the claimant had disability, and, if so, for what period(s). The hearing officer determined that the claimant did not sustain an injury while performing her job duties or while furthering the business of her employer on _____; but as a result of an injurious condition to her wrist and hand of undetermined origin the claimant was unable to obtain and retain employment at her preinjury wage from April 10, 2000, up to and including the date of the CCH. The hearing officer concluded that the claimant did not sustain an injury in the course and scope of employment on _____, and did not have disability as there was no compensable injury.

The claimant appealed the adverse determinations that she did not sustain an injury in the course and scope of employment on _____, and did not have disability on grounds of sufficiency of the evidence. The respondent/cross-appellant (carrier) filed an appeal conditioned upon the claimant's filing an appeal. The carrier appealed the findings that the claimant sustained an injurious condition to her wrist and hand of unknown origin and that she was unable as a result of her injurious condition to her wrist and hand to obtain and retain employment at her preinjury wage from April 10, 2000, up to and including the date of the CCH. The carrier contended that the evidence was sufficient to support the determination that the claimant did not sustain an injury in the course and scope of employment, but that the evidence was insufficient to support the finding that the claimant was unable to obtain and retain employment at her preinjury wage as a result of an injurious condition to her wrist and hand. There was no response from the claimant to the carrier's conditional appeal.

DECISION

Affirmed.

The claimant testified at the CCH that while working for the employer at a hat factory on _____, she sustained an injury to her right wrist when she picked up two wet, rolled western hats to insert into a machine to shrink them. She denied that the pain had been building for a period of time or was caused by repetitious activity with her wrist. The claimant contended that her wrist had a "weak" and "funny" feeling and "gave out" and that she did not know what it was so she reported an injury to her supervisor. She believed the hats weighed between five and eight pounds.

The claimant explained that she finished her shift but did not work the next day, a Sunday, and sought medical treatment the following Monday, April 10, 2000, after she had initially reported for work. The claimant contended that she was examined by Dr. P, who diagnosed a sprained wrist and placed her into physical therapy. The claimant stated that

she was released to light-duty work, but because the employer did not have light duty, she did not return to work because of the pain in her wrist and hand.

The claimant admitted that she had sustained an injury to her wrist on a prior occasion in 1994 which required surgery to correct the carpal tunnel syndrome (CTS) and to remove a cyst. The claimant asserted that she recovered from this injury. The claimant testified that she saw other doctors, one of whom diagnosed her with tendinitis and who released her to work until July 14, 2000. The claimant testified that she was terminated on June 5, 2000, but still had been restricted to light duty at the time of termination. The claimant admitted that she had missed work prior to _____, due to family medical concerns and had been counseled about her excessive absenteeism.

The carrier called Ms. L, who testified that as the human resources manager for the employer she was familiar with the claimant's work history. She contended that the claimant had a history of extensive absenteeism for the months of January, February and March, 2000, for which the claimant was reprimanded on March 30, 2000, and April 5, 2000. Ms. L also explained that she offered the claimant other duties on five different occasions after April 17, 2000, which she believed conformed to the claimant's treating doctor's restrictions. Ms. L testified that the claimant did not accept any of the offers and was terminated on June 5, 2000.

A medical report from Dr. P dated April 17, 2000, reflects that he examined the claimant on April 10, 2000, for right wrist pain. The claimant reported to Dr. P that she was working at a new position on _____, when she noticed pain in her right wrist. He noted that the claimant was concerned that a cyst, previously removed, was recurring. Dr. P assessed that the claimant had right wrist inflammatory pain and recommended that she reduce the amount of repetitive grasping and squeezing of the right hand and forearm. The claimant was released back to work with these restrictions through April 17, 2000.

The claimant returned for follow-up treatment on April 17, 2000, with the same complaints of pain extending into her right hand and forearm. Dr. P noted that the claimant had underlying personal medical concerns which made it hard to discern the level of motivation for returning to work; however, he extended her restricted duty. By report dated April 27, 2000, Dr. P opined that the claimant had a sprained/strained right wrist. A report dated May 11, 2000, reflects that the claimant's complaints of unimproved pain after no use since April 10, 2000, made for an atypical presentation for a work-associated overuse or tendinitis-type syndrome. The claimant was subsequently diagnosed with CTS by Dr. D in July 2000.

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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but 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).

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). We will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We affirm the hearing officer's determination that the claimant did not sustain an injury on _____.

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). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge