APPEAL NO. 002383

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 13, 2000. With regard to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) had not sustained an occupational (repetitive trauma) injury in the form of bilateral carpal tunnel syndrome (CTS); that the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment, was _____; and that because he did not have a compensable injury, he does not have disability, although finding that the "hand condition prevented Claimant from earning" his preinjury wage.

The claimant appealed the hearing officer's decision that he had not sustained a compensable injury, reciting evidence be believes supports his position. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent/cross-appellant (self-insured), in a contingent appeal, appeals the date of injury issue, asserting that it should be _____ and appeals the finding that the claimant was "unable to earn preinjury wages" due to the hand condition. The self-insured responds to the claimant's appeal, urging affirmance.

DECISION

Affirmed.

Initially, we note that although the claimant lists 20 exhibits (a through t) the packet sent to us for review simply consists of about 100 pages of documents stapled together in no particular order and untabbed as to any particular exhibits.

The claimant was employed as a bus driver by the self-insured. The claimant testified how operating the bus required him to use both hands to turn the steering wheel, to use his right hand to punch a keypad to enter adult fares, and to use his left hand to open and close the door. In addition, the claimant said that on occasion he had to operated a wheelchair lift.

In evidence are some progress notes from 1995 indicating that the claimant was complaining of numbness and pain in his hands and giving a diagnosis of "possible [CTS]," at that time. The claimant testified that in 1996 he had some pain in his left hand, that he contacted his "HMO" doctor who told him that the pain could be caused by sleeping in a fetal position and gave him medication and a brace which resolved the problem. The claimant testified that again in mid-_____ he began to have pain in his hand or hands, that he again contacted his HMO doctor in June 1999, that the doctor ran some tests, and that the doctor told him "that the results show symptoms of carpal tunnel" or something in his neck. The doctor referred the claimant to Dr. B. The claimant testified that he saw Dr. B for the first time on _____; that as the claimant was leaving, Dr. B asked him what he did; and that the claimant said he drove a bus for the self-insured. The claimant

says that Dr. B then told him his injury was work-related and that the claimant reported the injury to the self-insured's safety manager the next day. We found no report of the _____, visit from Dr. B among the documents admitted into evidence.

The claimant testified that because of a change in insurance coverage, he changed from the HMO to Dr. J. Dr. J, in several reports, diagnosed bilateral CTS and in a report dated July 27, 2000, stated:

> This patient has bilateral [CTS], which in all medical probability is caused by his current occupation. Patient again is employed by [self-insured] where he has worked as a bus driver for approximately 8 years. Specifically, the bilateral [CTS] was caused in his right hand by controlling the meter, and in his left hand opening and closing the doors. Both hands were systematically affected when he grips and turns the steering wheel in any direction.

The claimant testified that he had a right carpal tunnel release on December 7, 1999, but that he continues to have problems with his hands and has been unable to return to work.

Dr. F testified at the CCH and said that he specializes in orthopedics and hand surgery. Dr. F reviewed the medical literature (much of which is in the self-insured's exhibits) and testified that, in his medical opinion, while some occupations, such as using a jackhammer, could cause CTS, being a bus driver was not such an occupation. Dr. F explained what causes CTS and why the claimant's occupation would not have caused it. Dr. F did not examine the claimant.

The hearing officer, in appealed findings, determined:

FINDINGS OF FACT

2. Claimant worked as a bus operator for Employer before May 1, 1999. Claimant's job duties involved operating a bus over a route with numerous stops. Claimant had to steer the bus, operate a fare box with the right hand, and operate a door switch with the left hand.

3. Claimant was not exposed to repetitive physically traumatic activities in his job duties as a bus driver.

4. Claimant had hand pain in _____. Claimant's symptoms had also arisen with non work activities, and as a reasonably prudent person, Claimant neither knew nor should have known that his symptoms may be related to the employment.

5. Claimant went to his physician in the Summer of 1999 complaining of bilateral hand problems. Claimant received a diagnosis of [CTS] on _____ from [Dr. B], a referral doctor. [Dr. B] related

> Claimant's symptoms to employment. _____ is the first time as a reasonably prudent person that Claimant knew or should have known that the condition may be related to employment. The date of injury is _____.

The claimant's appeal mostly repeats the testimony and evidence presented at the CCH. Basically, the claimant testified that Dr. B told him that his CTS may be work-related, that he reported his injury the day after Dr. B gave him that information, and that Dr. J's reports indicate that the claimant's activities caused the CTS, ruling out other nonwork-related activities. Dr. F testified that the work activities would not have caused the CTS and identified other risk factors which could cause CTS. The evidence is clearly in conflict. 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). 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

An occupational disease is "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. . . . The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A

repetitive trauma injury is "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." Section 401.011(36). An employee must prove, by a preponderance of the evidence, the compensability of an occupational disease. Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). "[O]ne must not only prove that recurring, physically traumatic activities occurred on the job, but must also prove that a causal link exists between these activities on the job and one's incapacity; that is, the disease must be inherent in that type of employment as compared to employment generally." Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995, citing Davis v. Employers Insurance of Wausau 694 S.W.2d 105 (Tex. App.-Houston [14th Dist] 1985, writ ref'd n.r.e.).

The hearing officer determined that the claimant did not show that the actions involved in his employment are causally linked to his condition. We hold sufficient evidence exists to support the hearing officer's decision that the claimant had not sustained an occupational repetitive trauma injury and that the claimant timely reported the alleged injury when he reasonably knew or should have known the CTS may be related to his work pursuant to Section 408.007.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge