APPEAL NO. 002411

Following a contested case hearing held on September 21, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that:

1. The respondent (claimant) sustained a compensable injury, in the form of an occupational disease, on _____.

2. The claimant sustained disability from April 12, 2000 through June 7, 2000.

The appellant (carrier) appealed. The carrier asserts there was no evidence, or in the alternative insufficient evidence, that the claimed repetitive trauma, occupational disease was an injury as defined by the 1989 Act and that the evidence was insufficient to establish a causal connection between the claimed occupational disease and the claimant's employment because the claimant's occupation did not expose the claimant to a repetitive, physically traumatic activity. The carrier further asserted that because there was no compensable injury, there can be no disability.

The claimant responded that the hearing officer's decision is correct, that there was damage or harm to the physical structure of his body resulting from prolonged exposure to bouncing and vibration and the non-ergonomic positioning of his arms while driving, and that more than mere sitting was involved in causing his injury.

DECISION

Affirmed.

There was evidence presented to the hearing officer that the claimant was a truck driver for many years; that the claimant sustained an injury in the form of a bilateral muscle strain of the shoulders; and that the claimant's problems arose after he began driving a new truck with a seat which did not support his upper back and was at a slight angle to the steering wheel. The claimant presented some medical evidence which correlated the injury and the non-ergonomic positioning of the claimant's arms during the claimant's work activities.

The diagnosis of bilateral fibromyalgia does not mandate that the hearing officer find that no injury exists. The claimant's doctor also referred to the claimant's complaints as being caused by bilateral muscle strain. An injury is damage or harm to the physical structure of the body. Section 401.011(26). The evidence was sufficient to support the hearing officer's determination that an injury had occurred.

The carrier argues that the claimant's job involved merely sitting and that our decision in Texas Workers' Compensation Commission Appeal No. 92314, decided August 28, 1992, is controlling. There was, however, evidence from which the hearing officer

could conclude that the claimant was exposed to stresses endemic to this particular employment as a result of the faulty truck seat aside from the mere fact of prolonged sitting. The hearing officer's determination is not against the great weight of the evidence.

There was sufficient evidence to support the hearing officer's determination that the claimant was unable to obtain and retain employment at his preinjury wages as a result of the injury caused by the faulty truck seat.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge