APPEAL NO. 002423

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 8, 2000. The issue at the CCH concerned whether the undisputed carpal tunnel syndrome (CTS) injury sustained by the appellant (claimant) on _____, extended to and included her cervical area. The hearing officer held that it did not.

The claimant appealed, arguing that medical evidence supported her claim of the causal connection. The carrier responded that the hearing officer correctly held that the claimant failed to meet her burden of proof and it recites evidence supporting the decision against the claimant.

DECISION

We affirm the hearing officer's decision.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The CCH was very brief. The claimant testified that she worked for (employer) since mid-1990. She was off work briefly in 1993 and 1994 for another CTS injury, but worked continuously until her February 1998 CTS injury. She said she started having pain then in both hands, her neck, and her shoulder. She attributed her injury to bad ergonomics at her workstation. The top of her desk was below her waist and her keyboard was located there, with the monitor off to the corner.

The claimant said that her neck pain was either sharp or aching, and her neck would hurt when she put pressure on it. The claimant said she was bothered during her

housework activities. The claimant said she had not tried to work at all since _____, because her doctor, Dr. K, had not released her to work. She believed that her CTS surgeon, Dr. A, had released her to work.

The claimant said that she saw Dr. K as needed for adjustments on her neck, but sometimes those adjustments caused her more pain. When asked how long each day she performed a specific task on keyboards or adding machines, the claimant initially answered that she was not sure and could not put a time frame on it but then stated that it would be four to four and one-half hours out of a six-hour day. She said she had to lift and carry heavy bags once or twice a day, sometimes with assistance.

On March 17, 1998, the claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) contending repetitive trauma CTS injury to her arms, back, shoulders, hands, and wrists. A June 5, 1998, peer review doctor for the carrier, of the same discipline as Dr. K, stated that any cervical problems were not the result of the injury from the work described by the claimant.

A referral doctor's medical report dated April 28, 1998, noted that the claimant had complaints which included pain in her neck and both shoulders. One of the diagnoses of that doctor was cervical radiculitis. On June 15, 1999, a doctor for the carrier, Dr. P, examined the claimant and stated that the MRI of her cervical area was essentially normal. He found no evidence on physical examination suggestive of radiculopathy. Dr. P noted that there was no current cervical injury.

The designated doctor's report commented that an MRI done March 15, 1998, was interpreted as showing a left disc bulge touching the left neuroforamen without compression. The doctor gave a 19% impairment rating (IR) of which part was impairment for the cervical spine. This report was dated April 1, 2000, and was disputed by the carrier for the inclusion of an IR for cervical injuries.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this case,

the record supports the fact weighing and findings of the hearing officer and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge