

## APPEAL NO. 002468

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 20, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_, and that she did not have disability because she did not sustain a compensable injury. In her appeal, the claimant asserts that the hearing officer's determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

It is undisputed that the claimant sustained a prior injury to her right wrist and thumb in \_\_\_\_\_, which was diagnosed as de Quervain's tenosynovitis. On November 25, 1997, Dr. F performed a release of the first dorsal compartment of the claimant's right wrist. The claimant testified that in August 1999 she began working as a long-haul truck driver for the employer and that she passed a \_\_\_\_\_ physical before she started the job. The claimant stated that on \_\_\_\_\_, she had just completed a 10-hour shift as a driver; that her right hand and arm were very painful; that her right thumb, wrist and elbow were swollen; and that her fingers were tingling. The claimant testified that she thinks her injury occurred from having performed repetitive activities with her hand while driving the truck. Specifically, the claimant detailed that even though the truck had automatic transmission, she was required to manually shift gears in traffic and on hills. In addition, she stated that the power steering was going out on the truck and that it was difficult to steer and turn the truck, which weighed 80,000 pounds when it was loaded.

The claimant returned to Dr. F, her treating doctor for her \_\_\_\_\_ injury. In a report dated November 15, 1999, Dr. F diagnosed "persistent de Quervain's disease." In a November 23, 1999, report Dr. F diagnosed tenosynovitis of the first dorsal compartment "related to repetitive use of [claimant's] hand for her driving responsibilities." Dr. F stated that "[the tenosynovitis] does not seem related to her previous injury" because her prior problems had resolved and she had worked in a new job for several months without having problems. In an off-work slip also dated November 23, 1999, Dr. F stated that the claimant suffered an "exacerbation (reinjury) of [right] thumb tendinitis." In a May 12, 2000, letter addressed to the Texas Workers' Compensation Commission, Dr. F stated that "it does appear that the patient had sustained a new injury to her wrist in \_\_\_\_\_," specifically noting that "[i]t does not appear to represent a continuation of the \_\_\_\_\_ injury." Dr. F characterized the claimant's injury as an "aggravation" injury that resulted from performing her driving duties.

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana

1961, no writ). That question presents a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that she sustained a new injury from performing her duties as a truck driver. The hearing officer simply was not persuaded that the evidence presented by the claimant established that she sustained damage or harm to the physical structure of her body as a result of performing repetitively traumatic activities at work. The hearing officer rejected the claimant's testimony as to the repetitive nature of the work duties she performed. In addition, he rejected the evidence from Dr. F tending to demonstrate that the claimant had sustained a new aggravation injury. As the fact finder, the hearing officer is not bound by the medical evidence where the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). The hearing officer was acting within his province as the finder of fact in making his determination that the claimant did not sustain her burden of proving that she sustained a compensable repetitive trauma injury. Our review of the record does not demonstrate that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool, supra; Cain, supra. Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Judy L. Stephens  
Appeals Judge