APPEAL NO. 002521

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 October 10, 2000. With regard to the issues before him, the hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable occupational disease (repetitive trauma) injury to both upper extremities and that the claimant had disability from November 27, 1999, through June 20, 2000, but not after June 20, 2000, through the date of the CCH.

The appellant/cross-respondent (carrier) appeals, complaining certain pieces of evidence it perceives as being key were not considered, pointing out certain inconsistencies, and asserting that "performing a multiple task job for less than two months" could not have caused the injury. The carrier also appeals the disability findings. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant filed a timely appeal, asserting that she had disability after June 20, 2000, and continues to have disability. The claimant also responds to the carrier's appeal and urges affirmance on the injury issue and disability through June 20, 2000.

DECISION

Affirmed.

The claimant was employed by (employer). It is undisputed that the claimant had a right carpal tunnel syndrome (CTS) injury surgically corrected in 1997 and a left CTS injury surgically corrected in 1998. The carrier stresses that the 1998 left CTS injury initially included cervical complaints which were successfully denied by another carrier (which had coverage at the time). The claimant's treating doctor for these injuries was Dr. P, a chiropractor. The claimant returned to work with the employer in May 1999 as a PBX operator answering telephone calls. The extent of any continuing problems the claimant was having from the prior injuries is in dispute. In August 1999 the claimant was reassigned as a charge-back clerk. The claimant testified what the new duties entailed and while she did mention several different functions, even one of the employer's supervisors stated the new position involved "heavy computer use." The carrier complained that the hearing officer failed to note that the change in assignment also apparently had an increase in pay which the claimant did not receive in September and/or October. Shortly after the claimant's reassignment, the claimant began having problems with pain in her upper extremities. On November 26, 1999, the claimant again spoke with a supervisor about her salary adjustment (without mentioning upper extremity pain) and then went back to see Dr. P. No report from Dr. P for a November 26, 1999, visit is in evidence; however, reports dated November 29, 1999, referencing a _____, injury are in evidence.

In one November 29, 1999, report, Dr. P notes the 1997 right CTS and 1998 left CTS releases, that the claimant "was nearly asymptomatic for the most part . . . until approximately 11/26/99." Dr. P noted positive Tinel's tests and had an impression of

"[r]epetitive use trauma bilaterally of the shoulders, elbows, forearms, and wrists." In a report dated March 27, 2000, Dr. P again recited the claimant's medical history and commented:

> It is my opinion based on reasonable medical probability that the patient had developed a repetitive trauma to the upper extremities and possibly the cervical spine as well as the areas including the wrists, hands, elbows and shoulders bilaterally. She was treated appropriately for this acute symptomatology. She was responding favorably up to a point and then evidently plateau off response to care. I felt that further diagnostic testing would be necessary including EMG/NCV test of the cervical spine/upper extremities. This was never performed and in fact her claim was recently denied by the insurance carrier as being non-compensable.

The carrier argues that it wanted independent testing but was unable to have that performed. In another report, also dated March 27, 2000, Dr. P concluded that the claimant "sustained what evidently based on reasonable medical probability, was a distinct new injury."

The claimant was examined by Dr. K, a required medical examination doctor, who, in a report dated June 20, 2000, noted the claimant's complaints, negative testing including negative Tinel's signs, and recommended further nerve conduction studies for evidence of cervical radiculopathy. Testing was performed on July 5, 2000, and in a note of that date Dr. K said the tests were negative and that there was nothing else he could recommend for the claimant.

The hearing officer, in the Statement of the Evidence, commented:

> Based on the evidence, I conclude that Claimant sustained a new injury on _____, and had disability from November 27, 1999 through June 20, 2000. She had not had disability after June 20, 2000.

The carrier on appeal contends that the hearing officer did not give enough weight to the facts that the claimant performed more than just computer functions after her reassignment in August 1999; that the hearing officer failed to "highlight" the conversation the claimant had with her supervisor regarding her salary adjustment on _____, before the claimant went to the doctor; that the claimant had worked less than two months (on the reassignment), before complaining of arm pain; and that Dr. K, on June 20, 2000, essentially found the claimant to have normal range of motion, etc. The carrier also points out that the claimant had previously asserted a cervical injury in connection with her 1998 claim and that a different carrier "was successful in this denial." The carrier repeats many of these contentions more than once in its appeal. We can only say that these were factors which the hearing officer could, and we believe did, consider and apparently rejected. There were conflicts in the evidence and Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the

evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

As far as disability goes, the claimant testified that she was unable to work and this is supported by Dr. P's reports. Evidence to the contrary was Dr. K's June 20, 2000, report that found the claimant capable of normal activity, which is when the hearing officer determined disability ended. An earlier disability date would have been based on conjecture unsupported by the evidence. We find the hearing officer's determinations on disability supported by the evidence.

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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge