

APPEAL NO. 002606

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 17, 2000. The issue at the CCH was whether the appellant (claimant) sustained a compensable repetitive trauma injury in the form of bilateral carpal tunnel syndrome (CTS) on _____. The hearing officer did not agree that the claimant sustained CTS in the course and scope of her employment. The claimant has appealed, arguing that she proved her case. The respondent (carrier) responds by arguing facts in support of the hearing officer's decision.

DECISION

We affirm.

The claimant testified that she was the office manager for [company] and its predecessors (employer) for five years. She said that she was injured by "just writing." She said that she had to write memos when taking service calls and copying the information onto the schedule book and invoices. The invoices were three-part forms that entailed a little more forceful writing. She also wrote out a separate sheet for service technicians. The claimant said that this involved about 90% of her job. She then said that 90% of her job was "writing and typing."

Asked to describe her other duties, she said that she answered the telephone, up to 50 to 220 calls per day. The claimant said she averaged 45 paid hours a week, typically worked another 10 hours for which she was not paid, with a 6-day week. She said she wrote "all day," which did not mean intermittently, but to the point where she walked around with a pen in her hand. The claimant was asked to estimate her daily activities; she said she typed two hours a day and wrote on a dry-marker board about one hour and one-half hours a day. She was unsure how much time she would take writing while she was also on the telephone. She wrote about 5 to 60 invoices a day. The claimant testified that on _____, her hands started to hurt. She was ultimately diagnosed by her doctor with CTS. The claimant stopped working on July 28, 2000.

A written statement from two coworkers called into question the amount of writing claimed by the claimant, stating that about 10 invoices per day would be written out. It was contended that the work entailed about 15 minutes of typing per day. The off-work statements from her doctor are somewhat ambiguous and appear to clarify only that the claimant was seen on the day in question, with lines drawn through the statements where the doctor would be expected to complete work-status information.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value,

even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

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).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge