

## APPEAL NO. 002649

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 23, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and whether the claimant had disability due to the claimed injury of \_\_\_\_\_. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence. The respondent (self-insured) filed a response contending that the evidence was sufficient to support the determinations of the hearing officer and that the hearing officer's decision and order should be affirmed.

### DECISION

Affirmed.

The claimant was employed as a medical records clerk. She asserted that on \_\_\_\_\_, she was carrying some charts when her hands and arms began to hurt. The claimant contended that she had bilateral carpal tunnel syndrome (CTS) and had disability from the injury from July 28, 1999, through August 10, 2000. The claimant argued that her work duties were highly repetitive in nature which required the constant use of her hands in carrying and filing the medical records in conjunction with data entry that she performed at least three hours a day. The carrier offered diagnostic test results which indicated that the claimant did not have bilateral CTS and contended that the claimant's work duties did not involve sufficiently prolonged repetitive activities to cause CTS.

The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm." Section 401.011(26). The claimant had the burden to prove by a preponderance of the evidence that she sustained an injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The definition of "injury" includes occupational diseases. An occupational disease is defined as a "disease arising out of and in the course and scope of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that she had an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991.

The parties presented conflicting evidence as to whether the claimant sustained a compensable bilateral CTS injury. The hearing officer found that the claimant did not have bilateral CTS and, thus, did not have a compensable injury or disability. Resolving the conflict in the evidence was the province of the hearing officer. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the

weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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).

After review of the record we find the evidence sufficient to support the determination of the hearing officer and conclude that the challenged determination was not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse on appeal the determination that the claimant did not sustain a compensable injury in the form of an occupational disease. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The claimant asserted that she had disability from July 28, 1999, through August 10, 2000, when she returned to work. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury in the form of an occupational disease, the claimant cannot have disability.

We affirm the hearing officer's decision and order.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Robert W. Potts  
Appeals Judge

\_\_\_\_\_  
Judy L. Stephens  
Appeals Judge