APPEAL NO. 002772

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 November 9, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma (carpal tunnel syndrome (CTS)) injury; that the date of injury was _____ (all dates are 2000 unless otherwise noted), pursuant to Section 408.007; that the claimant timely reported his injury to his employer; that the claimant had disability from June 14 through the date of the CCH; and that the claimant timely filed his claim for compensation within one year as required by Section 409.003(b).

The appellant (carrier) appealed the hearing officer's decision on all issues, essentially arguing that the hearing officer gave greater weight to the claimant's evidence while "completely ignoring competent expert evidence" from its witness. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant had been employed by the employer as a "cotton classer" for about 20 years. The duties of and exactly what a cotton classer does were discussed at great length at the CCH. Basically, a cotton classer grades samples from bales of cotton to ensure that a certain amount is of a uniform quality with respect to length of fiber, color, texture, etc. How many samples or bales were sampled during a typical workday was in dispute but it varied from 300 to 600 procedures a day. The cotton-grading season lasted about five or six months and during the rest of the year the claimant did minimal, if any, cotton grading. Of significance some samples were brought to the CCH and the claimant demonstrated how he performed his work using both dry and wet cotton.

The claimant testified that about 10 years ago he began experiencing mild pain in his hands but thought it was arthritis. The claimant said that he made a doctor's appointment with Dr. H on the morning of May 12. The claimant was terminated later on that same day for reasons unrelated to his injury. The claimant was seen by Dr. H on May 15 and on an Initial Medical Report (TWCC-61) of that visit Dr. H diagnosed bilateral CTS. EMG/NCV testing was performed and in a report dated May 30, Dr. C confirmed bilateral CTS, right greater than left with "right ulnar neuropathy with suspected superimposed peripheral neuropathy." The claimant testified that after his workers' compensation claim was denied, Dr. H refused to treat him further and that he changed treating doctors to Dr. T, a chiropractor. Dr. T agreed with the diagnosis made by Drs. H and C and testified at the CCH that in reasonable medical probability the claimant's work was the cause of the bilateral CTS. Dr. T took the claimant off work on June 14.

The claimant testified that he thought he had arthritis in his hands until he was told by Dr. H that he had work-related CTS. The claimant said that he reported the injury to his employer on or about May 17 and filed his Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) within one year of May 15.

The carrier bases its dispute of the claim, and in large part its appeal, on the testimony of Ms. S, a certified rehabilitation counselor who testified that she had observed the claimant's work area, had seen other classers work, and concluded that in her opinion the claimant's job "would not be considered the type of which would cause a [CTS] injury." The carrier also presented testimony from Mr. J disputing how much work the claimant did and the procedures used. Mr. J agreed that the classers all performed their work using their own technique and Ms. S testified that whether the work could cause CTS depended on how fast and how frequent the motion was. The carrier also emphasized that the claimant's hobby was bowling, and suggested that caused the CTS. There was no evidence that the claimant did not have CTS, only whether the claimant's work caused the CTS.

The evidence was certainly conflicting 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). The hearing officer questioned Ms. S and obviously did not find her testimony persuasive.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge