APPEAL NO. 002815

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 October 9, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease and that she had disability as a result of her compensable injury from December 13, 1999, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that she began working for the employer as a tool crib attendant in January 1992. She was laid off and returned to work in the tool crib in 1996. The claimant explained that her job duties included receiving parts, stocking parts, pulling orders, answering the door to the tool crib, answering the telephone, and data entry on the computer. On June 4, 1999, the claimant sustained a laceration to her right middle finger at work. On _____, Dr. W performed extensor tendon repair surgery on the claimant's right middle finger. Dr. W took the claimant off work following surgery until October 5, 1999, when she returned to work for the employer sorting and filing documents. On November 4, 1999, the claimant had an appointment with Dr. W. Progress notes from that appointment state that the claimant is repetitively using her hand at work and that she has increasing pain. Dr. W stated that he believed the claimant was having symptoms of right carpal tunnel syndrome (CTS) "related to her chronic repetitive use at work." On November 30, 1999, Dr. W again listed an impression of right CTS and referred the claimant for EMG and nerve conduction testing. December 7, 1999, EMG testing of the right wrist revealed "mild median compression neuropathy at the wrist consistent with [CTS]." Dr. W took the claimant off work on December 13, 1999. Thereafter, the claimant changed treating doctors to Dr. B, who has continued the claimant in an off-work status. Dr. M, a doctor to whom the claimant was referred by Dr. B, opined in a February 15, 2000, report that the claimant's right CTS was caused by repetitively traumatic activities performed at work and recommended right carpal tunnel release surgery "because this offers the patient the best chance of having reduced pain and returning to gainful employment in a timely fashion."

The carrier contends that the hearing officer's determination that the claimant sustained a compensable occupational disease injury is against the great weight of the evidence. In so doing, the carrier notes that in an October 4, 1999, progress note, one day before the claimant returned to work in a light duty position following the _____, surgery for her prior compensable injury, Dr. W noted that the claimant had "tenderness over the carpal tunnel" and that she had "some symptoms related to her carpal tunnel."

The carrier maintains that because Dr. W references carpal tunnel in the October 4, 1999, report, it follows that the claimant's right CTS is related to the June 4, 1999, compensable injury and is not a new injury. We find no merit in this assertion. As noted above, both Dr. W and Dr. M attribute the claimant's CTS to the repetitive activity she performed at work both before and after the June 4, 1999, compensable injury. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In his role as the fact finder, the hearing officer was free to accept the causation opinions of Dr. W and Dr. M and the other evidence establishing the causal connection between the claimant's employment and her right CTS. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Reviewing the hearing officer's injury determination under that standard, we find no sound basis to disturb that determination on appeal.

The success of the carrier's challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability from December 13, 1999, through the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge