

APPEAL NO. 002827

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 November 2, 2000. The hearing officer determined that the appellant (claimant) had not proven that her left thumb injury sustained on or about _____, extended to bilateral carpal tunnel syndrome (CTS) and a median nerve compression syndrome.

The claimant has appealed, arguing that she has proven her case through her medical evidence. The respondent (carrier) responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer has comprehensively summarized the evidence presented in the case. We will briefly summarize by repeating that the claimant, who is left-handed, began having left thumb pain about three and one-half months after she began work as a customer service representative. As the hearing officer noted, she did not use a mouse; she used a headset to answer telephone calls and performed some computer input in order to answer questions. Custom software enabled her to go from screen to screen with the touch of a key. While the claimant generally described her actions, characterizing them as "repetitive," there was little testimony describing in much detail the use of her hands or the time within a day that she considered herself devoted to these activities.

To greatly summarize the evidence, she was ultimately diagnosed in late 1999 with a high median nerve compression syndrome by her doctor, Dr. H, a hand specialist. When her upper left extremity was operated on, an unusually thick muscle band was discovered. Dr. H attributed the development of this to her work, emphasizing how use of a computer mouse with her preferred extremity could cause the problem. Later on, when the claimant had surgery on her right extremity, the same thick muscle band was discovered there. It was after the claimant returned to work part time in summer 2000 that her bilateral CTS was diagnosed.

As the hearing officer has described, there is conflicting medical evidence offered, some from doctors who did not examine the claimant, that her condition was not related to her work. A required medical examination doctor appointed by the Texas Workers' Compensation Commission (Commission), Dr. J, concurred with Dr. H, but also noted that he had not been given the claimant's medical records by either the Commission or the carrier.

Opinion testimony does not establish any material fact as a matter of law and is not binding on the trier of fact. American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Moreover, expert evidence based upon inaccurate underlying facts cannot support a verdict. See Burroughs Wellcome Company

v. Crye, 907 S.W.2d 497 (Tex. 1995); Texas Workers' Compensation Commission Appeal No. 990591, decided April 30, 1999. The hearing officer could consider that a major assumption in Dr. H's opinion was that claimant used a computer mouse when she did not.

Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.).

The hearing officer is the sole judge of the relevance, the 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).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); Volentine, *supra*.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that the decision is not sufficiently supported by the evidence, and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge