APPEAL NO. 002930

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 December 5, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable (unspecified repetitive trauma) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from April 1 to the date of the CCH.

The appellant (carrier) appeals, contending that the claimant failed to prove any kind of injury, that at most the claimant has an ordinary disease of life, and that the medical evidence does not meet the uniform standard required of experts, citing court cases. The claimant responds urging affirmance.

DECISION

Affirmed.

The claimant was employed as a customer service representative by (employer). There was conflicting disputed testimony as to how much of the claimant's time was actually spent typing or keyboarding. The parties have accepted _____ as the date of injury. The claimant saw Dr. M on February 11, and in a report of that date Dr. M had an impression of bilateral arm pain and ordered an ergonomic assessment of the claimant's workstation. Subsequently, on February 29, Dr. M ordered EMG and "NCS" testing for bilateral upper extremities. EMG testing by Dr. A was normal. Dr. A had an assessment of "Chronic overuse syndrome" and "Question repetitive stress injury." Dr. M, in a report of March 24, essentially agrees with Dr. A's assessment and reduces the claimant's work hours from eight hours a day to four hours per day. In a note dated April 26, Dr. M writes:

> [Claimant] has irritation of the median nerve (B) wrists that is causing carpal tunnel syndrome [CTS] which are not severe enough to be picked up by an EMG.

In another note Dr. M diagnoses CTS. The claimant changed treating doctors to Dr. B, a chiropractor, who, in a report of October 8, commented:

> This, in my opinion, is an obvious repetitive type injury. [CTS] is the first thing that comes to mind, however, she has had an EMG...which was negative. Therefore, it could be a low-grade, early presentation of [CTS] in conjunction with facet syndrome of the cervical spine.

The evidence, both regarding the scope of the claimant's work and the medical evidence regarding her condition, is in conflict. The hearing officer is the sole judge of the weight and credibility of the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and

determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The carrier's appeal of the disability issue is based on lack of a compensable injury. In that we are affirming the hearing officer's decision on the compensable injury, we also affirm the determinations of disability.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge