APPEAL NO. 010026

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 7, 2000, the hearing officer resolved the sole disputed issue by determining that the respondent (claimant) sustained a compensable occupational disease injury on _____. The appellant (carrier) globally appeals the factual findings, legal conclusions, and decision and order on sufficiency of the evidence grounds, contending that the claimant's testimony is not credible, given various inconsistencies, and that the history of the injury she provided Dr. H cannot support his opinion on the cause of her injury. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant described in detail her job duties in the music compact disc (CD) department of the employer's store, stating that she was either stocking and/or rearranging CDs in the racks or ringing up CD sales to customers, and that on _____, she began to experience pain and tingling in her left arm. She said she reported the pain and tingling to her supervisor, who told her go see a doctor. The first doctor she saw, Dr. C, reported on August 17, 2000, that the claimant had left deltoid tendinitis as well as tendinitis of the left forearm and left carpal tunnel syndrome (CTS), and that in all medical probability her work activities were the cause of her left arm and hand problems. Dr. H reported on July 17, 2000, that his diagnosis was left CTS, left posterior interosseous syndrome, left cubital tunnel syndrome, and left lateral and medial epicondylitis, all "secondary to typing and lifting injury at work on _____." The carrier's peer review doctor stated that he could not make a diagnosis with certainty and suggested the claimant be seen by an orthopedic surgeon.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and determines what facts have been proven (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The hearing officer obviously felt that the claimant's testimony was credible, that the opinions of Dr. C and Dr. H on causation were credible, and that the claimant met her burden of proof with a preponderance of the evidence. We do not find the challenged determination to be 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

DISSENTING OPINION:

I dissent. Simple assertion that one uses one's hands a lot at work, with scant or no development of the tasks, the hours, and the gestures expended or employed, ought to be regarded as legally insufficient to prove that damage has resulted from "repetitious, physically traumatic activities that occur over time . . . ." In reviewing the testimony here, I am left with no clue as to what the hearing officer "could have believed" to be either repetitious and traumatic activities or that they "occurred over time." The definition set out in Section 401.011(36) plainly indicates that coverage is extended to the cumulative effect of essentially identical tasks and gestures performed day in and day out as part of one's work, not a variable range of actions that happen to involve the same region of the body. (*See* concurring opinion in Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994.)

Susan M. Kelley
Appeals Judge