APPEAL NO. 010470

Following a contested case hearing held on January 30, 2001, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that: 1) the appellant (claimant) had not sustained a compensable repetitive trauma injury on _____, and 2) the claimant did not have disability as a result of a claimed compensable repetitive injury of _____. Other findings were not appealed.

DECISION

We affirm.

The medical records in this case are discussed at length in the hearing officer's Statement of the Evidence. The claimant's exhibits are the sole medical evidence in the record, aside from the claimant's testimony. Within the exhibits, the claimant's treating physician, Dr. M, a neurologist, diagnosed the claimant's difficulty as "repetitive overuse syndrome with associated localized pain affecting the right lateral forearm muscle." On October 11, 1999, an MRI showed a central and right paracentral herniation at C4-5 and a small disk bulge at C5-6. On January 11, 2000, disks at C4-5 were removed and a fusion at C4-5 was done. A postsurgical cervical spine MRI shows the healing fusion to be stable and notes "[d]egenerative disc disease at C5-6."

The hearing officer did not find Dr. M's diagnosis convincing. He concluded that "there is no credible evidence showing that the Claimant's work has caused the degenerative disk disease or aggravated it." In weighing the medical evidence, the hearing officer said, "all the objective tests preponderate to show that the Claimant had and has degenerative disk disease as opposed to repetitive overuse syndrome or nerve entrapment of the ECRL muscle . . . ." In summary, the Claimant has not shown by a preponderance of the evidence that she sustained a compensable injury . . . ." The hearing officer found no compensable injury, and therefore no disability.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). 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). In order for the claimant to prove disability, she was required to establish by a preponderance of the evidence that a compensable injury was a cause of her inability to obtain or retain employment at wages equivalent to her preinjury wage. Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993. Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244

S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip O'Neill
Appeals Judge