APPEAL NO. 010485

Following a contested case hearing held in _____, Texas, on February 7, 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 suffered a compensable injury on _____; and 2) that the claimant did not have disability resulting from the injury sustained on _____. The claimant appealed, asserting that he had sustained a compensable injury. The respondent (carrier) responds that the hearing officer's decision and order should be affirmed.

DECISION

We affirm.

The claimant's theory of the case was that he was suffering from a minor repetitive trauma injury to his right hand before September and that on _____, he injured the same hand in moving a commode. The eventual diagnosis, as reflected in Claimant's Exhibit No. 2, was tenosynovitis of the wrist, associated right forearm myalgia, ganglion cyst, and "[r]ule out carpal tunnel syndrome." Following this diagnosis of December 16, 2000, an electromyelographic study was done and on December 19 the report showed "[e]ssentially normal electrodiagnostic study." (Claimant's Exhibit No. 2, pp. 4-5)

The claimant asserts correctly that the sole medical evidence in the case is the evidence submitted by him; and, that since it is uncontroverted, therefore the trier of fact must find a compensable injury, since the medical records do recite that it is a work-related injury. However, the fact that the medical evidence is uncontroverted does not mean that it establishes an injury sufficient and so convincing to the hearing officer that he is required to find a compensable work-related injury. Finding of Fact No. 2 states, "There is insufficient medical evidence to show to a reasonable degree of medical probability that Claimant's injuries are related to his workplace activities."

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.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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, he was required to establish by a preponderance of the evidence that a compensable injury was a cause of his inability to obtain or retain employment at wages equivalent to his 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.).

Because we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant, by definition in Section 401.011(16), cannot have disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge