APPEAL NO. 011207
FILED JULY 16, 2001

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 scheduled for April 16, 2001, was reset for May 14, 2001, with the record closing on that date. The hearing officer concluded that the respondent (claimant herein) sustained a repetitive trauma injury on _____. The appellant (carrier herein) files a request for review arguing that the evidence in the record is insufficient to support the hearing officer's decision in that it is specifically insufficient to support the hearing officer's finding that the claimant's work duties required repetitive physically traumatic activities with her left hand. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer, and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that she is employed with a health care company as a physician's specialist. The claimant testified that her job duties were repetitious in nature in that she used her left hand to enter data as well as to pick up and organize files. The claimant testified that she typed 4-5 hours a day at work and when not typing she was organizing files mainly using her left hand. The carrier called a coworker and the claimant's supervisor who testified that the claimant's work activities were not repetitive in that they were varied. The carrier also put into evidence a film allegedly showing a person performing the claimant's regular job duties.

The claimant was diagnosed with left carpal tunnel syndrome (CTS). Dr. W, the claimant's treating doctor, related the claimant's CTS to her work duties. Dr. R, the carrier's required medical examination doctor, stated as follows:

> As I reviewed the medical records and watched the video tape I feel that her [CTS] is possibly related to her work but the cause and relationship remains somewhat weak. Even though the tape revealed the patient does type and files but it was minimal and does not really constitute repetitive type activity but her description of her job is rather more intense and repetitive in nature.

Dr. P did a peer review of the medical records at the request of the carrier and concluded that the claimant's CTS was attributable to aging and genetics.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and

credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding 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.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find that to be the case here.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge