APPEAL NO. 012528
FILED DECEMBER 3, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A combined contested case hearing was held on September 18, 2001. In Docket No. (1), the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include tenosynovitis of the right wrist and right forearm and ulnar entrapment of the right elbow. That determination is unappealed and has, therefore, become final. Section 410.169. In Docket No. (2), the hearing officer determined that the claimant did not sustain a compensable repetitive trauma injury in the form of right carpal tunnel syndrome (CTS), with a date of injury of _____; that the injury sustained on _____, does not extend to and include tenosynovitis of the right wrist and right forearm and ulnar nerve entrapment of the right elbow; and, that because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appealed, asserting that the determinations of the hearing officer are against the great weight of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

It is undisputed that the claimant sustained a compensable injury on _____, in the form of repetitive trauma, bilateral CTS. As a result of that injury, the claimant underwent bilateral carpal tunnel release surgery in 1993. The claimant was certified at maximum medical improvement in April of 1994, with a 13% impairment rating. The claimant testified that she was released back to full-duty work by her treating doctor in February of 1994, and that she last sought treatment for the 1992 compensable injury in 1996. At the time of the claimed injury, the claimant was a material handler. The claimant's job duties included loading and unloading pallets, stocking, and data entry. The claimant testified that her duties were repetitive in nature and submitted a statement from her supervisor which supported this contention. The claimant testified that she had been having problems with her right wrist prior to _____, in that it felt tired and sore. On _____, the claimant was pulling a pallet jack when she felt a "pop" in her right wrist and felt an immediate onset of pain. The claimant was diagnosed with bilateral CTS, right tenosynovitis, and bilateral ulnar nerve entrapment.

On appeal, the claimant asserts that the hearing officer's determinations as to the repetitiveness of her job and nature and extent of her injuries are against the great weight of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). There was conflicting evidence presented on the disputed issues. The hearing officer determined that the claimant's work was not repetitive in nature and that on _____, the claimant sustained a specific injury to her right wrist, but that the medical records do not causally relate the mechanism of the specific injury to a diagnosis of right CTS, right tenosynovitis of the right wrist and forearm, or ulnar

entrapment of the right elbow.

A "repetitive trauma injury" is an injury which occurs "as the result of repetitious, physically traumatic activities that occur over time and arise out of the course and scope of employment." Section 401.011(36). To establish a repetitive trauma injury, a claimant must present some evidence that he or she is engaged in essentially the same trauma-producing conduct that is reasonably frequent, that is, repetitive in nature. Texas Workers' Compensation Commission Appeal No. 94941, decided August 25, 1994. Whether a repetitive trauma injury has been established is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93057, decided February 25, 1993. The claimant testified that her job entailed the performance of several different activities over the course of the day. The hearing officer could conclude, however, that the activities which the claimant described were not sufficiently repetitive so as to cause the claimed injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find there is sufficient evidence to support the hearing officer's determinations that the claimant's work was not repetitive in nature, and that she did not sustain a compensable repetitive injury.

The hearing officer determined that the medical evidence was insufficient to causally relate the mechanism of the specific injury the claimant sustained on _____, to the diagnosis of right CTS, tenosynovitis of the right wrist and right forearm, and ulnar nerve entrapment of the right elbow, and that the claimant did not have disability. Conflicting medical evidence was presented on the issues of causation and extent of the claimant's current medical condition. The claimant's treating doctor states that the claimant's condition is the result of a new repetitive trauma injury, occurring on or about _____. The carrier submitted a peer review report which indicates that the specific injury of _____, in no way caused the claimant's current condition, and that her nonwork related thyroid condition predisposes her to the development of CTS. There is medical evidence in the record that the claimant was suffering from bilateral CTS as early as March of 1996, and that her symptoms were worsening. 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In Finding of Fact No. 6, the hearing officer found that the claimant "sustained a

specific injury to her right wrist on _____." However, the hearing officer failed to make a determination as to the compensability of that injury and whether it resulted in disability, and, if so, for what period of time. We remand this case back to the hearing officer for the sole purpose of making findings of fact and conclusions of law on those specific issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001).

The hearing officer's decision and order are affirmed in part and remanded in part.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

GARY SUDOL
ZURICH NORTH AMERICA
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge