APPEAL NO. 020208
FILED MARCH 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 9, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and that the claimant does not have disability. The claimant appealed, arguing essentially that the hearing officer erred in determining compensability and disability. The respondent (carrier) filed a response urging affirmance.

DECISION

Affirmed.

The claimant testified that he sustained a prior compensable injury to his right forearm when he pulled on a chain while working for the employer in _____; that as a result of the injury, he was placed on light duty that involved a lot of repetitive lifting, bending, and reaching; that as a result of his repetitive duties, he experienced pain and numbness to his right arm on _____; that he was eventually diagnosed as having carpal tunnel syndrome and cubital tunnel syndrome in his right arm, which his doctor attributed to his repetitive activities at work; and that he worked light duty from June 1, 2001, to August 1, 2001, then went on family leave until August 23, 2001, when he was terminated from his employment because he had exhausted his sick and vacation leave. The claimant has not worked or earned wages since August 1, 2001, to the date of the CCH. The carrier contends that the type of work activities the claimant performed do not support a repetitive trauma injury.

The hearing officer made findings of fact and concluded that the claimant did not sustain a compensable injury in the form of an occupational disease on _____, and that he therefore did not have disability. Without a compensable injury, the claimant would not have disability, as defined by Section 401.011(16). The claimant had the burden to prove that he was injured in the course and scope of his employment and that he had disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that

of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. We conclude that the challenged findings are supported by sufficient evidence and not 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
SUITE 750
COMMODORE I
AUSTIN, TEXAS 78701.

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge