APPEAL NO. 041366
FILED JULY 26, 2004

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 held on May 12, 2004. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury with a date of _____, and that she had disability, as a result of her compensable injury, from December 3, 2003, through the date of the hearing. In its appeal, the appellant (carrier) asserts error in the hearing officer's injury and disability determinations. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in making her injury and disability determinations. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained her burden of proving that she sustained an injury as a result of performing repetitively traumatic activities at work and that she had disability from December 3, 2003, through the date of the hearing. The factors emphasized by the carrier in challenging those determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before her. Nothing in our review of the record reveals 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 reverse the injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In her decision the hearing officer noted that the time and motion study showed that the claimant's work duties required her "to keep her elbow flexed in the same position while she performed data entry, which the Carrier previously determined was repetitive and traumatic in the earlier claim." This statement refers to the fact that the claimant had a compensable carpal tunnel syndrome injury in 2001, with the same employer during a period where this carrier also provided workers' compensation coverage. The carrier argues that it was "wholly improper" for the hearing officer to have considered the "acceptance" of the prior claim in resolving the issue in this case. Specifically, the carrier argues that "[c]learly by this statement the Hearing Officer is improperly shifting the burden of proof by not requiring the Claimant establish that she engaged in physically repetitious and traumatic activities which allegedly resulted in cubital tunnel syndrome." We cannot agree that the hearing officer improperly shifted

the burden in this case or that she relieved the claimant of her burden of proving the causal connection between her job duties and her cubital tunnel syndrome. The hearing officer was convinced that the claimant's job duties required her to keep her elbow in a flexed position while she performed data entry and that as a result, the claimant developed cubital tunnel syndrome. The hearing officer's determination in that regard is supported by the reports of Dr. W and Dr. A, which she was free to accept over the contrary evidence presented by the carrier. While the carrier's statement is certainly correct that the hearing officer could not impose liability for a cubital tunnel syndrome injury on the carrier simply because it previously paid benefits in the claimant's prior carpal tunnel syndrome claim, our review of the record does not reveal that the hearing officer did so in this case. We perceive no reversible error.

The hearing officer's decision and order are affirmed.

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

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge