APPEAL NO. 950249

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on January 11, 1995, with (hearing officer) presiding as hearing officer. The issues were: (1) whether the respondent's (claimant) right shoulder, neck and left wrist injuries resulted from the compensable injury of (date of injury), that involved her right wrist; (2) whether the respondent (carrier) waived the right to contest the compensability of the claimant's injuries by failing to dispute them within 60 days of receiving written notice; (3) whether the claimant has reached maximum medical improvement (MMI), and if so, on what date; (4) what is the claimant's correct impairment rating (IR); and (5) whether the claimant suffered any disability as the result of a compensable injury on (date of injury). The hearing officer determined that: (1) the claimant's compensable injury of (date of injury), includes only injuries to her right wrist and left wrist, and that the claimant did not suffer a repetitive trauma injury to her right shoulder or neck in the course and scope of her employment on (date of injury); (2) the carrier waived its right to contest the compensability of the claimant's left wrist injury by failing to dispute it within 60 days of receiving written notice that it was being claimed; (3) the claimant reached MMI on October 19, 1993; (4) the claimant's whole body IR must be determined by the designated doctor based only on the claimant's injuries to her right wrist and left wrist; and (5) the claimant suffered disability as the result of her compensable injury from December 9, 1991, until the date of the hearing, but is entitled to temporary income benefits (TIBS) only until she reached MMI on October 19, 1993. The carrier appealed arguing that the evidence is not sufficient to support the determinations of the hearing officer that the claimant sustained an injury to her left wrist in the course and scope of her employment on (date of injury), and that the carrier waived its right to contest the compensability of the claimed left wrist injury. The claimant responded requesting that the Appeals Panel affirm the decision of the hearing officer.

DECISION

We affirm.

The claimant testified that she worked as a seamstress for the employer for 17 years. She said that she sewed waist bands in trousers, sewed on eighty pairs of trousers per hour, and worked from eight to twelve hours a day. She testified that she developed pain in her hands and that she first saw (Dr. H) for this problem on (date of injury). She said that she told Dr. H that she had pain in her hands that went into her shoulders. Claimant said that Dr. H told her that the pain was provoked by the repetitious movement of her hands at work, that he did not take her off work, and that he gave her medication and a band to protect her hand. Claimant said that she thinks that she went to Dr. H three or four times, and that he referred her to (Dr. C). She said that she told Dr. C that she had pain in her hands all the way to her neck. She testified that he said that the pain was because of the movement of her hands and that he gave her medication for inflammation and another brace. Claimant said that on the second visit he gave her a custom made cast and a shot and told her that she could go back to work but that she could not lift heavy things. She said that a supervisor sent her to (Dr. G) and that the supervisor went with her to Dr. G. Claimant said that she

told Dr. G that she had pain that went through her hands to her neck. She said that Dr. G told her supervisor to put her on a job in which she could move her hands differently. She said that she was placed in a job folding trousers, that the job caused too much pain, that she was placed in a job ironing, and that the ironing also caused too much pain. She said that she went back to Dr. G; that he said that she needed surgery on her right hand; that she had the surgery on June 25, 1992, when her vacation was scheduled; and that she returned to work with stitches in her right hand after seven days of vacation. She said that Dr. G returned her to light duty but that she was given regular work unpacking large boxes and threading spools. She testified that she is right handed, that she worked ten hours a day, and that she hurt a lot. She said that the doctor and her manager sent her to (Dr. DP), a rheumatologist. She testified that she had a lot of pain and that Dr. DP took her off work on August 5, 1992. She said that the carrier asked her to see (Dr. PA). She said that the first time she saw Dr. PA he did not say that she had reached MMI because she needed treatment on her left hand. Claimant said that the doctor recommended therapy for her hand and shoulder, but that the therapy for her shoulder was not approved.

On cross-examination the claimant said that "her hand is from her wrist to her fingers," but that her whole arm hurts. She said that she came to the local Texas Workers' Compensation Commission (Commission) office to complete the claim form dated August 14, 1992. She said that Carrier's Exhibit A, Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated August 14, 1992, says that she hurt her hands, that her daughter completed the form, and that she, the claimant, signed the form. She said that people at the Commission told her to complete Carrier's Exhibit B, an undated TWCC-41; that her daughter completed the form that shows the injury to be to her hands and wrists with a date of injury of November 11, 1991; and that she, the claimant, signed the form. On redirect-examination she said that she used the November date of injury because she was told at work that she had to use that date because that is when the doctor reported it. She said that she did not know of another carrier until after she had surgery. She said that a new file was established after June 1992 when the doctor wanted to perform surgery on her left hand. She said that she always maintained that both wrists and shoulders hurt.

The claimant and the carrier introduced medical reports. In a letter dated November 24, 1994, Dr. H wrote:

> On (date of injury), [claimant] presented to this office complaining of tenderness in the right forearm, with swelling. On examination the left shoulder, elbow and wrist were found to be normal, but the right forearm was tender and swollen over the flex and tendon sheath. A diagnosis of DeQuervain's tendinitis was made . . . . Patient was referred for nerve conduction studies to (Dr. S), neurologist on Tuesday, 10/22/91. Patient was also referred to see [Dr. C], orthopedic surgeon, on Thursday, 10/24/91. Patient did not return to this office after her referrals.

Dr. H went on to state that Dr. S reported that the electromyogram and nerve conduction studies of the right wrist and forearm were normal and that Dr. C's report was consistent with tenosynovitis and he recommended oral anti-inflammatory medication as well as continued use of a splint for immobilization of her thumb. Dr. H also wrote that he last saw the claimant on October 18, 1991, and that he has no knowledge of an injury in November 1991. In a letter dated June 21, 1993, Dr. PA stated that Dr. G performed a right first dorsal compartment release on June 25, 1992; that he recommends that the claimant receive injections in the operated upon compartment, that he recommends that she undergo a left first dorsal compartment release, and that he cannot issue an IR as long as she has an on-going problem in her left dorsal compartment that has not been treated. In a Specific and Subsequent Medical Report (TWCC-64) dated November 27, 1991, Dr. C reported that the claimant said that her right wrist was getting more painful, that she said that she is beginning to have symptoms in her left wrist, that EMG and nerve conduction tests were normal, that he diagnosed DeQuervains tendinitis, that he injected her tendon sheath with excellent results, and that she was provided a custom made plaster cast. In a letter dated November 15, 1994, Dr. C wrote that he saw the claimant in October 1991 when she complained of a two month history of pain in her right wrist aggravated by her work; that she was seen the first week of November 1991 and on November 21, 1991, and gave no history of subsequent injuries; and that he felt that her condition was tenosynovitis of the right wrist aggravated by her job. On August 6, 1992, Dr. DP wrote that about a year ago the claimant started having pain in her right hand, that she now has pain in both hands up to her shoulders, that the pain is the same in both hands, and that he thinks that the problems are due to overuse. On March 2, 1994, Dr. DP recommended that the claimant be seen by a hand specialist to determine if additional hand surgery were appropriate. In a letter dated May 4, 1994, Dr. DP wrote:

> I have followed [claimant] for the last year and a half because of her chronic hand and arm pain. She initially did very poorly despite injections and even surgery. The pain has really been bilaterally from the start, but was always more so on the right until lately when it seems to be equally painful to both arms . . . .
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> My impression remains that she has had occupational stress secondary to the use of her hands in a repetitive manner for a prolonged period of time . . . . Certainly patient's with fibromyalgia which is a diffuse soft tissue pain syndrome relate an onset of injury or stress to the cause of their disease in at least 50% of the time.
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> My impression is that this is what is going on with [claimant]. I think this should be included in any evaluation of disability.

(Dr. S), the Commission-selected designated doctor, certified that the claimant reached MMI on October 19, 1993, with a 19% IR. He assigned eight percent IR for the right upper extremity, but he did not assign an IR for the left upper extremity because he

was told that it was not to be addressed because it was the subject of another claim with another insurance carrier. He assigned a 12% IR for the cervical spine and used the combined values chart to arrive at the 19% IR.

The burden of proof is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment, Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991; and the extent of the injury, Texas Workers' Compensation Commission Appeal No. 94851, decided August 15, 1994. 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). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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 a case such as the one before us where both parties presented evidence on the extent of the injury and the date of the injury, the hearing officer must look to all of the relevant evidence to make a factual determination and the Appeals Panel must consider all of the relevant evidence to determine whether a factual determination of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. Section 408.007 provides that the date of injury for an occupational disease, which includes repetitive trauma, is the date on which the employee knew or should have known that the disease may be related to the employment. After considering the evidence, the hearing officer determined that claimant first knew that she had suffered a repetitive trauma injury on (date of injury), and that the injury included her right wrist and her left wrist but did not include her right shoulder and neck. An appeals level body is not a fact finder, and it 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). 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 clearly wrong or 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer that the claimant suffered an occupational disease on (date of injury), and that the injury included the claimant's right wrist and left wrist, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The hearing officer also determined that the carrier waived its right to contest the compensability of the claimant's left-wrist injury by failing to dispute it within 60 days of receiving written notice that it was being claimed. The claimant introduced a facsimile transmission from the (Ms. P) in the Commission field office handing the claim to the carrier asking it to start temporary income benefits as soon as possible since the claimant was off work and providing a copy of a letter from Dr. DP dated August 6, 1992. This letter is mentioned earlier in this decision. Dr. DP stated that the pain started in her right hand and then she started to have pain in her left hand. Dates are not provided. The doctor also wrote that she uses her right hand and her left hand to sew a waistband onto pants. He took her off work, continued medication, and recommended physical therapy and occupational therapy for her hands. The carrier argued at the hearing that the claim for injury to the left wrist was the claim of another carrier and that there was no reason for the carrier in this case to dispute the claim. The hearing officer did not agree. The evidence is sufficient to support the determination of the hearing officer that the carrier did not timely dispute the compensability of the claimant's left-wrist injury.

Dr. PA issued a TWCC-69 dated October 19, 1993, in which he recommended that the claimant have a left side first dorsal compartment release and certified that the claimant reached MMI on October 19, 1993, with a three percent IR for the right hand. The designated doctor, Dr. S, did not consider the injury to the claimant's left wrist when he certified that the claimant reached MMI on October 19, 1993, and on March 2, 1994, Dr. DP recommended that the claimant be seen by a hand specialist before a decision on MMI is made; however, the determination of the hearing officer concerning MMI was not appealed and has become final. Section 410.169.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge