APPEAL NO. 980412

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to her left wrist on _____. The claimant contended that that compensable injury includes injury to her right shoulder, right elbow, right wrist, right knee, left elbow, left arm, and lumbar, thoracic, and cervical spine. She also contended that she sustained repetitive trauma injury to her hands, neck, and shoulders in the course and scope of her employment and that the date of injury for those injuries is (Prior injury date). A contested case hearing (CCH) was held on February 4, 1998, to resolve the disputes that arose out of those two claims. The hearing officer, rendered a separate decision concerning each claim. Concerning the claimed repetitive trauma injury, she determined that the date the claimant knew or should have known her claimed injury may be related to her work was (prior injury date), that she did not report the claimed injury to her employer until August 8, 1997; that she did not timely report the claimed injury to her employer within 30 days of the date of injury; that she did not have good cause for not timely reporting the claimed injury to her employer; that she did not sustain a repetitive trauma injury in the course and scope of her employment; and that she did not have disability. The claimant appealed, urging that the evidence established that she timely reported the claimed injury to her employer on August 1, 1997; that, if she did not timely report the injury to her employer, she had good cause for not doing so; that she sustained repetitive trauma injuries in the course and scope of her employment; and that she had disability through the date of the hearing and that the determinations of the hearing officer that she did not are against the great weight and preponderance of the evidence. The claimant also contended that the hearing officer erred in admitting a statement of (Mr.RL), the employer's general manager of the location where the claimant worked. She requested that a decision in her favor be rendered. The carrier responded, urging that the hearing officer did not err in admitting the statement; that if admitting the statement was error, it was harmless error; and that the evidence is sufficient to support the decision of the hearing officer. The carrier requested that the decision of the hearing officer be affirmed.

Concerning the compensable injury sustained on _____, the hearing officer determined that the claimant did not injure her right shoulder, right elbow, right wrist, right knee, left elbow, left arm, or lumbar, thoracic, or cervical spine and that she had disability beginning on _____, continuing through July 16, 1997. The claimant appealed, contending that the determinations are against the great weight and preponderance of the evidence, that the hearing officer erred in admitting statements of employees of the employer and a Texas Workers' Compensation Commission (Commission) record of claims filed by the claimant and requesting that a decision in her favor be rendered. The carrier responded, urging that the hearing officer did not err in admitting the documents; that, if there was error, it was harmless; and that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

Affirmed.

In the Decision and Order in each case, the hearing officer summarizes the evidence and detailed summaries will not be repeated in this decision. Briefly, the claimant began working in December 1996 for the employer that built mobile homes and used caulk and putty to close holes, painted, cleaned windows, swept, and mopped. She testified that she had to reach above her head and that the pressure of pushing caulk and putty into small holes caused her problems. She said she thought her problems were work related the "very, very beginning of July." The claimant contended that a notice or representation from her attorney dated August 1, 1997, notified the employer of the claimed repetitive trauma injury.

On _____, the claimant was coming down a scaffold when she slipped and landed on her feet. The parties stipulated that she injured her left wrist. The claimant said that she grabbed the scaffold to hold herself and that she injured other parts of her body, that she went to an emergency clinic, that she told the doctor she had injured her other wrist also, and that the doctor told her he was to treat only the left wrist unless the employer approved other treatment. The report from the emergency room does not mention other injuries. The claimant returned to work light duty the same day, but the next day left work because of a reaction to medication. (Mr. JL), the claimant's supervisor, saw the incident, testified as to what he saw, and contended that only the claimant's left wrist was injured. The claimant was seen by (Dr. H) on July 30, 1997; and Dr. H reported that his impression was left and right wrist and elbow trauma, trauma induced carpal tunnel syndrome, right knee trauma, and cervical and thoracic strain. He took the claimant off work for one month. Dr. H continued to treat the claimant and keep her off work. In a letter dated January 7, 1998, Dr. H said that the claimant had been unable to work from July 30, 1997, to the present date because of a severe injury to her left wrist.

At the CCH, the claimant objected to documents, urging that they were not timely exchanged. The hearing officer determined that statements of two employees of the employer were not timely exchanged, but stated at the CCH that she found good cause for not timely exchanging them. On appeal, the claimant contended that the hearing officer erred by failing to state in the Decision and Order in each case that she found good cause to admit the statements that were not timely exchanged. The Decision and Order in each case does not state that the hearing officer found good cause to admit the document, but the record does indicate that when the hearing officer admitted the statements that were objected to, she stated she found good cause to admit them. While it may have been preferable for the hearing officer to have noted in each Decision and Order that she found good cause to admit documents that were objected to, it was not reversible error for her not to do so. On appeal the claimant also contended that the hearing officer erred in admitting those to statements and the lifetime record of claims filed by the claimant obtained from the

Commission. The claimant did not object to the admission of the lifetime record at the CCH, and the objection to admission of that document may not be raised for the first time on appeal. Evidentiary rulings on documents which are admitted or not admitted are generally viewed as discretionary and the standard of review is abuse of discretion. In determining whether there is an abuse of discretion, we look to see if the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. The hearing officer did not abuse her discretion in admitting the statements. Even if it had been error to admit the statements, it would not have been reversible error. To obtain error in admitting documents, that party must first show that it was error to admit the documents and that the error was reasonable calculated to, and probably did, result in an improper decision. Appeal No. 941414, *supra*. We will consider the objected-to documents in determining whether the evidence is sufficient to support the decisions of the hearing officer.

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). 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 are 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 in both cases, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order pertaining to the claimed repetitive trauma injury with a date of injury of (Previous injury date), and the decision and order pertaining to the specific injury on _____.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge