APPEAL NO. 991322
AND APPEAL NO. 991323

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 3, 1999, a contested case hearing (CCH) was held. This case involved two injuries, with two different dates of injury, but were consolidated and heard at the same time on May 3, 1999. Although the hearing officer wrote two separate decisions, those decisions are substantially similar, with only the dates of injury and docket numbers different. Consequently, this decision covers both cases and both appeals.

With regard to the issues before him, the hearing officer found that appellant (claimant) did not sustain a compensable (right wrist repetitive trauma) injury on Injury 1 (referred to as the April injury, and Appeal No. 991322), and did not have disability due to that injury; and that claimant did not sustain a compensable (left wrist repetitive trauma) injury on Injury 2 (referred to as the December injury, Appeal No. 991323), and did not have disability due to that injury.

In separate appeals, claimant contends that the medical evidence, including the testimony of Dr. WA, supports her contention that she "has Mild right carpal tunnel, bilateral wrist pain and Cervical strain." Claimant contends that she had disability due to the right wrist injury from Injury 1, through August 31, 1998, returned to work on September 1, 1998, and then had disability from Injury 2, and continuing for either her left wrist injury and/or her bilateral wrist pain. Claimant requests that we reverse the hearing officer's decision in both cases and render a decision in her favor. Respondent (carrier) responds that the diagnostic testing was "equivocal," with no independent evaluations of claimant's work area or activities, and requests that the hearing officer's decision be affirmed.

DECISION

Affirmed in both cases.

Claimant testified that she has been employed by (employer) since December 1996 as a customer service representative. Claimant testified that she worked eight to 10 hours a day taking telephone calls, using a headset, and inputting data in a computer. (Claimant apparently worked eight hours a day Wednesdays through Fridays and said she had one and one-half hours mandatory overtime on Mondays and Tuesdays.) Claimant testified that she took 50 to 60 calls a day and had two 15-minute breaks and a 30-minute lunch break a day. Claimant testified that she spent 100% of her time typing and keyboarding. A disputed videotape in evidence shows employer's customer service representatives talking on the telephone using headsets and occasionally inputting data in a computer. Claimant testified that the video was not representative of her work area or what she did and, although the video purports to be of the employer's City premises and claimant was a union steward, claimant testified that she did not recognize the premises or any of the people in the videotape. In short, the evidence of claimant's job duties and how much keyboarding

she actually did was in dispute.

Claimant testified that her right hand and wrist began bothering her in March 1998 and that she sought medical care with Dr. D on Injury 1. Claimant testified that Dr. D took her off work on that date. No contemporaneous medical report from Dr. D is in evidence. A radiological pathologic report dated May 5, 1998, of an April 8, 1998, examination indicates "Normal Wrist and Shoulder." Dr. D did "computerized mechanical, isometric muscle testing with torque curves" that is in evidence. In a report dated October 23, 1998, Dr. D references the Injury 1, office visit, complaints of right wrist pain and commented:

> [Claimant] stated that she felt pain, and numbness in her right wrist while performing normal job duties. She described the pain as achy, throbbing and constant, with no relief. She then sought treatment at my office.
>
> After the consultation and examination, I found her symptoms to be work related . . . .

Dr. D referred claimant to Dr. B, who, in a report dated May 14, 1998, commented:

> The patient has had a progressive presentation of pain beginning some time in early 1998. She has noticed the increasing pain and finally stopped working on 4/3/98 because of her symptoms. The patient cannot recall any direct trauma or injury to her extremity[.] She has had no previous complaints of this nature.

Dr. B diagnosed tendinitis of the right forearm and a "mild entrapment neuropathy of the upper right extremity." An attorney referred claimant to Dr. WI, who, in a report dated August 18, 1998, stated claimant had been treated by Dr. D "for right carpal tunnel syndrome [CTS]" and that claimant "has had EMG/NCV done" but he had not seen the results. Dr. WI states that claimant "definitely has right [CTS] by signs and symptoms and despite being off work for the last four months or so." Claimant testified that she returned to work on September 1, 1998; that she continued to have right wrist pain; and that she continued to see Dr. D from time to time for treatments, massage and manipulations.

Claimant testified that she was not entirely satisfied with Dr. D's treatment and, because her right wrist injury caused her to use her left wrist and arm, claimant developed left wrist pain and eventually consulted Dr. E, on December 24, 1998. Claimant testified that Dr. E took her off work. In an Initial Medical Report (TWCC-61) dated December 24, 1998, Dr. E only refers to the right arm and prescribes a treatment plan "of various physiotherapeutic modalities." Dr. E referred claimant to Dr. WA, a neurologist, who, in a report dated January 28, 1999, had an impression of "Right wrist sprain. Right median neuritis. Right elbow sprain." A right wrist splint was prescribed. Dr. E also referred claimant to Dr. T, an orthopedic surgeon, who, in a report dated March 1, 1999, noted that studies done by Dr. WA "were within normal limits," but found "Phalen's test was positive on the right." Dr. T's assessment was "[c]ubital tunnel syndrome in the right elbow and compression of the ulnar nerve in Guyon's canal in the right hand, secondary to repetitive

trauma syndrome with constant use of the keyboard and the mouse."

In a report dated February 11, 1999, Dr. E states claimant was seen for her "left wrist and hand symptoms related to an on the job repetitive injury suffered injury 2." Dr. E diagnosed left CTS. Dr. E sums up the various findings in a report dated March 23, 1999, where he describes claimant's duties as "sitting at a computer between eight and nine hours per day, at an average of 42½ hours per week," that the initial consultation was on December 24, 1998, and concluded:

> The findings of this examination were consistent with [CTS] of the right wrist and Myofascitis of the right Forearm. As an added measure I referred the patient to [Dr. WA] for a neurological examination. Again the assessment clinically shows a repetitive motion injury. [Dr. WA] diagnosed her with Median Neuritis of right upper extremity. As an extra precaution I referred this patient to [Dr. T] an Orthopedic Surgeon for an evaluation. [Dr. T's] examination also reveals damage to the patients [sic] right extremity resultant from her repetitive motion at work. With all this evidence pointing us in this direction I must say in my clinical expertise with all medical probability this patient has sustained a compensable repetitive motion injury while exercising her normal duties in the course and scope of her employment.

Dr. WA saw claimant again on April 29, 1999, referred to "repetitive injuries to her upper extremities . . . using key and mouse" and diagnosed the mild right CTS, bilateral wrist sprain and cervical sprain. Dr. WA testified at the CCH and sought to explain the absence of positive objective testing for CTS in 1998, saying that it sometimes takes six to eight weeks after symptoms appear to show up in positive diagnostic testings. Dr. WA also stated that he relied on claimant's history to make his assessment and that he did not have first-hand knowledge of claimant's workplace or actual duties. Carrier points out that claimant's testimony was that she began having symptoms in March 1998, whereas the first positive Phalen's test was not until March 1, 1999. Further, claimant testified that her condition has gotten progressively worse since she has been off work in December (either 14 or 24), 1998.

The hearing officer, in his Statement of the Evidence, comments:

> Although Claimant may have some positive medical findings, she is not persuasive that there is a causal connection between her work activities and any claimed occupational disease. Also, Claimant is not credible in her assertion that she types continuously all day in the sense that she may type all day without a break in the typing. Rather, Claimant does intermittent typing throughout the day. If Claimant has any degree of [CTS], she is not persuasive that her work duties are a producing cause of right or left wrist or hand problems. Claimant exaggerated her work duties to medical providers, and the extended treatment that she has received is not justified by objective findings. If either alleged injury were compensable, Claimant would still not have disability. An MRI of Claimant's right wrist and shoulder reflect a normal

right wrist and shoulder.

Claimant appeals the hearing officer's decision, pointing to the various medical reports and that "expert medical evidence to a reasonable medical probability was not necessarily required to establish causation between CTS and the employment." We have briefly summarized the medical evidence and do not necessarily disagree with the proposition cited by claimant. In fact, we have frequently noted that injury and disability may be established by claimant's testimony alone, if believed, citing Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989), and Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). We have also held that, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve, citing Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In this case, the hearing officer clearly found claimant's testimony and evidence unpersuasive, and that she had exaggerated her duties to the medical providers. In this regard, we have noted that a fact finder is not bound by the testimony (or evidence) of a medical witness when the credibility of the testimony is manifestly dependent on the history given to the doctor 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.).

In that we are affirming the hearing officer's decision that claimant had not sustained a compensable injury, claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

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Dorian E. Ramirez
Appeals Judge