APPEAL NO. 94070

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 16, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues submitted for resolution were:

1)Did the Claimant sustain a compensable injury to her right hand/arm in addition to the injury to her left hand/arm on (date of injury);

2)What is the date of maximum medical improvement; and

3)What is the Claimant's impairment rating?

The hearing officer determined that the claimant sustained a compensable work-related injury to her right hand/arm in addition to the injury to her left hand/arm "on (date)(sic)" (date of injury was undisputed as having been (date of injury)) and claimant achieved maximum medical improvement (MMI) on June 1, 1993, with an impairment rating (IR) of 20% as certified by a designated doctor.

Appellant, carrier herein, contends that the hearing officer erred in finding that claimant injured her right hand/arm on (date of injury), that the right hand/arm injury was "due to a cumulative trauma injury of (date of injury), which involved the claimant's left hand" and requests that we "overrule" the hearing officer's decision. The MMI date was not appealed and the impairment rating was appealed only insofar as the designated doctor considered injury to both the right and left hands/arms. Respondents, claimant herein, and Hospital, subclaimant[1] herein, respond that the decision is supported by the evidence and request that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed, as reformed showing a correct date of injury as (date of injury).

Claimant testified that she had been employed by (employer)., the employer herein, an air conditioning manufacturer, as a production and assembly line worker since July 1990. Claimant testified she used her hands extensively assembling units and used tools such as air drills, screw drivers, pliers etc. It was claimant's testimony that on (date of injury), while

[1]Hospital has intervened in this case to request payment of its bill for treatment to claimant's right hand/arm. Section 409.009 dealing with subclaims provides that "a person may file a written claim with the Commission as a subclaimant if the person has: (1) provided compensation, including health care provided by a health care insurer . . . and (2) sought and been refused reimbursement from the insurance carrier." Further, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 141.1(a) (Rule 141.1(a)) provides "a request for a benefit review conference may be made by a claimant, a subclaimant, a carrier or an employer . . . ." Also Rule 102.4 provides filing notices with a "subclaimant." In any event, the subclaimant's standing was not contested at the CCH nor was it an appealed issue, therefore we need not comment on it further.

assembling a unit she "had to force a screw into a metal that's called a header plate . . . ." Claimant states she had to pull the unit toward her with her left hand while forcing the screw in with her right hand. Claimant testified that while she was "forcing a screw into a header plate . . ." she felt "a burning sensation up in my . . . left muscle, forearm." She stated she had problems with her right hand or forearm "but the burning sensation was not in the right like it was in left." Claimant also testified her "hands were tingling really bad, both of my hands were." Claimant said that she continued work on , but complained to one of her supervisors that her arms were sore but was told to keep on working. Claimant testified that at the end of her shift she was requested to stay late to finish five units but that she refused saying, "I'm going home, my arm is killing me, I need to go home." Claimant said she attempted to get an appointment with a doctor but was unable to do so and she went to the hospital emergency room (ER) that evening. The next day, (date), claimant said the employer sent her to the company doctor, (Dr. B). Claimant said Dr. B took her off work on (date) and referred her for a "nerve study" (EMG) and that after the test came back Dr. B referred her to (Dr. S). Dr. S performed surgery for a left carpal tunnel syndrome (CTS) on April 6, 1992. Claimant states that because she was not satisfied with Dr. S and that "he lied to me" she went to (Dr. A) and began treating with him on May 12, 1992. Dr. A conducted additional studies and surgery was scheduled on her right arm on December 12, 1992. Claimant testified that the carrier "could not approve the surgery because they had no recollection that there was any problem involving the right arm." Claimant states the carrier's adjustor "approved the surgery for January the 4th of '93" on her right arm. Claimant states she had "surgery on the right carpal tunnel and alter nerve on the right elbow" on January 4, 1993.

The medical evidence includes an Initial Medical Report (TWCC-61) dated 3-19-92 from Dr. B indicating a left arm and shoulder injury and taking claimant off work. A handwritten progress note indicates "some sensory [loss] [R] hand x 2 mos. [with] drilling." Dr. B in a March 20, 1992, progress note states "numbness [R] index finder" and "[positive] Tinel's on [R]." Dr. B also notes that claimant has "CTS likely on [R]" as well as the left. Dr. B in a subsequent progress note indicates claimant "had [L] Carpal Tunnel Release 4/16/92."

(Dr. G) apparently did the EMG testing on referral from Dr. B. It would appear from Dr. G's March 25, 1992, report that he tested only the left arm. Dr. G's impression was "median nerve motor and sensory conduction slowing across the left wrist consistent with a fairly significant left carpal tunnel syndrome." In another report, dated May 19, 1992, Dr. G writes Dr. A, regarding another evaluation and electrodiagnostic study, "median nerve motor and sensory conductions across the left wrist that are much improved compared to the previous study although still slightly beyond the outer limits of normal which is not unusual this soon following surgery."

A report from Dr. S, dated March 27, 1992, indicates that claimant complained of "numbness in both hands." Dr. S, in the report, states he discussed alternatives and that claimant desired surgery which would "consist of left wrist, median nerve release . . . ." Claimant had a "left wrist median nerve release, epineurotomy, and flexor

tenosynovectomy." Claimant in May 1992 then began treating with Dr. A. In a June 8, 1993, Report of Medical Evaluation (TWCC-69) and narrative report Dr. S certified MMI on June 8, 1993, with a 5% IR. In the detailed June 8th narrative, Dr. S recounts claimant has had three operations (two to the left elbow and wrist and one to the right wrist and elbow), acknowledges claimant is being treated by Dr. A, notes he has reviewed Dr. A's records, states as further history "[t]he patient denies any injury to her right arm," and responds to carrier's adjustor's inquiry regarding a causal relationship by stating:

I would like to respond that, in my opinion, there is no relationship to this patient's on-the-job injury on (date of injury) and her right arm problems. In my opinion, this patient's right arm problems are not related to her work.

Claimant began treating with Dr. A in May 1992. By a very brief note dated September 28, 1993, Dr. A opines that claimant has been treated for bilateral CTS and "I do feel that the right hand injury is related to her original job injury as well as the left hand."

Dr. A performed surgery on claimant's right wrist at the subclaimant's facility on January 4, 1993. Hospital records indicate "bilateral ulnar nerve injury at the elbows & bil. CTS w/neuropraxia."

Because of Dr. S's June 8, 1993, TWCC-69 assessing a five percent IR and claimant's dispute of that rating, the Texas Workers' Compensation Commission (Commission) appointed (Dr. H) as a Commission-selected doctor by letter dated July 20, 1993, to determine whether MMI had been reached and the percentage of impairment, if any. Dr. H by TWCC-69 and narrative dated August 3, 1993, certified MMI on June 1, 1993, with 20% IR. The report also included a psychological assessment which Dr. H had requested. In a comment to the Commission dated October 6, 1993, Dr. H stated that he had used the AMA Guides mandated by Section 408.124.

The record also contains a September 30, 1993, report of (Dr. D) a pain management and rehabilitation specialist, apparently on a referral from Dr. A. Dr. D recounts claimant's medical history, including Dr. H's evaluation and gave an impression of "chronic pain involving the left upper extremity with residual complaints of paresthesia and numbness involving both upper extremities." Dr. D recommended a pain management program which claimant attended. By report dated November 12, 1993, Dr. D opined claimant had reached MMI (stating "[t]his is not, of course, to say that she is pain free or 'cured'.") Claimant was discharged to a "chronic pain support group" and the Texas Rehabilitation Commission (TRC).

As noted previously, the hearing officer determined claimant "injured her right hand/arm in addition to her left hand/arm" forcing the screw into a metal plate on (date of injury), and that Dr. H, as a Commission-selected doctor certified MMI on June 1, 1993, with a 20% IR. In the hearing officer's statement of the evidence, she states all the medical evidence was evaluated and the great weight of the other medical evidence does not overcome the presumption of the designated doctor's report.

Carrier contends that the hearing officer's decision is in error in that the claimant is claiming a specific injury occurred on (date of injury) (as opposed to a repetitive trauma injury), and that claimant's "sole complaint at that time was for an injury to her left hand or arm." Carrier argues its contention is supported by the medical records and claimant's report of injury. Carrier further contends that since only the left arm/hand were involved the designated doctor's report was "invalid" because he considered injury to both hands/arms. Consequently, it is carrier's position that since claimant has a financial interest in the outcome of the case ". . . her testimony should be disregarded . . . is completely unsubstantiated by any other evidence . . . . Therefore, the claimant's testimony alone is against the great weight and preponderance of the other evidence and is not a basis for a finding which is supported only by this testimony." Carrier provides no legal authority for its position, and we reject it as being against the case law and established Appeals Panel precedent. In Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989), the Texas Supreme Court held that in a workers' compensation case the determination of disability may be based on the sole testimony of the injured employee, citing Reina v. General Accident Fire and Life Assurance Corp., 611 S.W.2d 415 (Tex. 1981). The Appeals Panel has similarly held that an injury may be proven by the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 94005, decided February 15, 1994; Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992.

Carrier alleges that when claimant completed the report of injury she only mentioned her left arm. However, the only report of injury in evidence was the Employer's First Report of Injury or Illness (TWCC-1) which was clearly completed by the employer. Claimant testified she reported both hands were injured and she did not see the report of injury or TWCC-1 until the benefit review conference. It is within the province of the hearing officer, as the sole judge of the credibility of the witnesses and the weight to be given their testimony (Section 410.165(a)) to resolve conflicts and inconsistencies. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer here clearly believed the claimant's testimony over the inferences raised by the employer's TWCC-1. We find no error in the hearing officer having done so.

Carrier also argues that the "medical records of that time period are void of any mention of a right hand injury." We believe that statement to be factually incorrect and point to Dr. B's (the employer's company doctor) progress note of (date), noting sensory loss of the entire "[L] . . . some sensory [loss] [R] hand . . ." and further on the March 20, 1992, progress note complaints of numbness "[R] index finder" and a positive Tinel's "on [R]" and CTS likely on the right as well as the left. Further Dr. S's (employer's referral doctor and surgeon on the first left CTS release) report dated March 27, 1992, indicates that the claimant complained of "numbness in both her hands" albeit prior to (date of injury). These records show that claimant complained of right hand numbness contemporary with her injury and that Dr. B noted objective signs of an injury to the right hand. Dr. A's note, dated September 28, 1993, gave the opinion that the "right hand injury is related to her original job injury [of (date of injury)]." We find there is sufficient evidence to support the hearing officer's determination that claimant suffered an injury to her right hand/arm in addition to

the injury to her left hand/arm on (date of injury).

We do, however, reform or correct, the hearing officer's recitation of the evidence, and Findings of Fact and Conclusions of Law insofar as they refer to a (date) report of injury. The evidence and testimony clearly refer to a (date of injury), injury. We believe the references to a 1993 date of injury were merely typographical errors. We find this does not constitute reversible error.

Having reviewed the record, we find no reversible error and sufficient evidence to support the hearing officer's factual determination. In considering all the evidence in the record, we find that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The decision and order of the hearing officer are affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Alan C. Ernst
Appeals Judge