

## APPEAL NO. 990721

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 5, 1999. He determined that the respondent (claimant) sustained a compensable left shoulder injury on (date of injury for docket no. 1); that he did not sustain a compensable left elbow injury on (date of injury for docket no. 2); and that he had disability as a result of the (date of injury for docket no. 1), injury beginning on August 14, 1998, and continuing through September 3, 1998, and beginning on (date of injury for docket no. 2), and continuing through January 7, 1999. The appellant (carrier) appeals one finding of fact relating to disability and one finding of fact relating to the (date of injury for docket no. 1), injury. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The finding that the claimant did not sustain a compensable injury on (date of injury for docket no. 2), has not been appealed and has become final. Section 410.169.

### DECISION

Affirmed.

The claimant worked as an airline baggage handler. He sustained a work-related cervical spine injury (not the subject of the proceedings below) on September 24, 1996, and returned to work without restrictions on November 5, 1996. He testified that he experienced left arm pain on (date of injury for docket no. 1), while unloading cargo and that at lunch that day his elbow locked. Dr. L diagnosed tendinitis with possible rotator cuff inflammation. The claimant further testified that on (date of injury for docket no. 2), while working he experienced pain in his left elbow. On that date he saw Dr. C, who diagnosed ulnar neuritis.

Testimony of the employer's injury counselor and a third party administrator for the carrier was to the effect that the claimant at first complained of experiencing left arm pain while at lunch on (date of injury for docket no. 1), and only changed his story to say he had the pain while actually unloading cargo after the carrier denied the claim.

The carrier appealed the following finding of fact and conclusion of law:

### FINDING OF FACT

16. Due to the claimed injury, Claimant was unable to obtain or retain employment at wages equivalent to his pre-injury wage beginning on August 14, 1998 and continuing through September 3, 1998; and beginning on (date of injury for docket no. 2) and continuing through January 7, 1999.

## CONCLUSION OF LAW

- 3.a. The Claimant sustained a compensable injury, in the form of an occupational disease, with a date of injury of (date of injury for docket no. 1).

The specific Conclusion of Law 3.b. finding disability based on Finding of Fact No. 16 was not appealed. The only reason provided for the appeal is as follows:

It is Carrier's contention that the Hearing Officer mistakenly determined that the Claimant was disabled on (date of injury for docket no. 2). In a review of the statement of the evidence, the Hearing Officer details the work the Claimant performed on (date of injury for docket no. 2), while working for the employer. The Hearing Officer notes that the Claimant was performing his duties at the bottom of the conveyor belt on (date of injury for docket no. 2). In fact, the Claimant filed a workers' compensation claim based on his activities for the employer on (date of injury for docket no. 2). The Carrier requests that the Appeals Panel find that if the Claimant sustained disability, the disability did not include (date of injury for docket no. 2), as the Claimant was performing his duties for the employer.

A fair reading of the text of the appeal suggests that the carrier is only appealing the finding that the last period of disability began on (date of injury for docket no. 2), and urges that we render a decision that it began on September 10, 1998. If, however, the carrier is also appealing the finding of a compensable injury on (date of injury for docket no. 1), we affirm that finding as sufficiently supported by the testimony of the claimant. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

As to the appeal of one day of disability, we observe that at the CCH disability was generally a "stepchild" issue with very little attention given it. It would certainly have been preferred that this question of the date the last period of disability began be expressly addressed. In any case, we agree that the evidence clearly established that the claimant was at work for at least a portion of (date of injury for docket no. 2), and that on this day he also saw Dr. C. In Texas Workers' Compensation Commission Appeal No. 961441, decided September 11, 1996, we held that missing time from work to attend a doctor's appointment may be a basis of disability. Relying on this case, we affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Thomas A. Knapp  
Appeals Judge

Gary L. Kilgore  
Appeals Judge