

APPEAL NO. 991001

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 April 13, 1999. He determined that the appellant's (claimant) compensable injury of _____, did not extend to the neck, back, depression and bilateral carpal tunnel syndrome (BCTS) and that the claimant had disability only for the period from October 20, 1997, through October 27, 1997. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a certified nurse's assistant. On _____, she and a co-worker were bathing a patient when the patient resisted and pushed the claimant against a wall. The claimant struck her head and twisted her right ankle. The carrier accepted liability for a right ankle and right shoulder injury. The claimant contends that she also injured her neck and back and sustained BCTS and, eventually, depression as a result of this accident.

The claimant testified that the pain was initially more severe in the shoulder and ankle. She said she complained to her employer over the following week about the need for treatment and was referred to a clinic on October 16, 1997. Though it is not clear who filled it out, the patient questionnaire for this visit reflects complaints only of shoulder and ankle injury. The diagnosis was a right ankle sprain. The claimant was released to light duty the next day. She worked until her next visit on October 20, 1997. The report of this visit reflects ankle pain and the diagnosis was ankle strain. The claimant was taken off work for a week and returned to regular duty on October 27, 1997. The claimant continued working until January 16, 1998, because, she said, the contract between her employer and the nursing facility where she worked ended. The claimant next saw Dr. D on February 10, 1998. She said she had no intervening medical care since October 27, 1997, because she could not afford it. Dr. D diagnosed a lumbar strain, anxiety/depression and CTS. He noted that she presented with complaints of wrist, neck, right ankle, right shoulder, and back pain which he attributed to the _____, injury. Dr. D referred the claimant to Dr. S, who diagnosed cervical and lumbar strain and suspected right CTS. An EMG test of April 17, 1998, disclosed BCTS. A cervical MRI of January 22, 1999, showed bulging and a lumbar MRI of March 9, 1998, was "unremarkable." The claimant admitted a prior brief experience of depression for which she was prescribed medication, but attributed her current depression to her injury, the pain, and the financial stress the injury caused. She denied that other stressors in her life were the cause of her depression.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease . . . naturally resulting from the damage or harm." The claimant has

the burden of proving a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This presents a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, who is the sole judge of the weight and credibility of the evidence pursuant to Section 410.165(a), was not satisfied that the claimant met her burden of proof on the extent of injury question. He noted in his discussion of the evidence that the claimant had a preexisting history of depression and emotional problems related to a personal situation and that the lack of complaints of back, neck, and wrist pain in initial treatment reports "diminish the persuasiveness of Claimant's assertions of injury to the neck and back and BCTS." The claimant appeals this determination, arguing that she was hindered in perfecting her case by the lack of cooperation from the employer, including its failure to keep good records or offer her advice on how to handle her injury and again asserting that her depression was caused by this injury. As noted above, it was the responsibility of the claimant to establish a compensable injury to her neck and back and compensable BCTS and depression. The hearing officer, as fact finder, simply was not persuaded that she proved that her injury included these elements. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the extent-of-injury determination.

The claimant also appeals the failure of the hearing officer to find disability after February 10, 1998. He premised this conclusion on his determination that the compensable injury included only the right shoulder and right ankle. The claimant worked from October 27, 1997, to January 16, 1998, when, she said, her job ended. The hearing officer concluded from this evidence that any inability to earn preinjury wages after February 10, 1997, when the claimant first saw Dr. D and was taken off work, was not caused by the compensable injury, but by the other conditions he found not to be compensable. Whether disability exists is also a question of fact for the hearing officer to decide and can be proved by the claimant's testimony alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Under our standard of review, we find the evidence sufficient to support the disability determination.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge