APPEAL NO. 991121

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On May 10, 1999, a contested case hearing (CCH) was held. This case has two docket numbers involving different dates of injury and different carriers. For ease of reference (Docket No. 1), will be referred to as the 1995 injury wherein it was stipulated that insurance coverage was with the Texas Workers' Compensation Insurance Fund, referred to as carrier F, and (Docket No. 2) will be referred to as the 1999 injury where coverage was with The Hartford Insurance Company, referred to as carrier H. With regard to the 1995 injury, the hearing officer found that the compensable 1995 carpal tunnel syndrome (CTS) injury was a producing cause of claimant's CTS "before and after (1999 injury)." With regard to the 1999 injury, the hearing officer found that claimant had not sustained a (new) compensable right CTS injury and that while claimant was unable to obtain and retain employment for the period of January 18 through April 26, 1999, claimant "did not have disability because Claimant did not sustain a compensable injury."

Carrier F appealed, contending that the hearing officer's decision was insufficiently supported by the evidence, that the evidence shows that claimant sustained a new compensable injury in (1999 injury), and that carrier H had failed to prove that the sole cause of claimant's condition and inability to work was due to the 1995 injury. Carrier F requests that we reverse the hearing officer's decision and render a decision in its favor. Although the decision generally is contrary to the claimant's position at the CCH, the file contains neither an appeal, nor a response, from claimant to carrier F's appeal. The file also contains no response from carrier H.

DECISION

Affirmed.

Claimant had been employed as a data entry clerk for the employer for some years. In 1994, claimant was diagnosed as having bilateral CTS, worse on the right than on the left and in May 1994 underwent right CTS release by Dr. S. (This surgery was apparently nonwork-related or not compensable.) Claimant returned to work as a data entry clerk for the employer and, according to the medical records, did reasonably well until April 1995 when she began experiencing recurrent symptoms in her right hand. Carrier F, who had workers' compensation coverage on the employer at that time, apparently accepted liability for a compensable CTS injury. Claimant testified that she missed work for about three weeks for the 1995 injury. Claimant had no further surgery and was treated conservatively with a wrist band and anti-inflammatories. Dr. S was claimant's treating doctor for this injury. The parties stipulated that for the 1995 compensable injury, claimant reached maximum medical improvement on July 28, 1995, with a nine percent impairment rating (IR), as certified by Dr. H. Claimant returned to work for the employer but worked shorter

hours. In late 1996, and part of 1997, for a period of about six months, claimant went to work for an insurance agency doing general secretarial work. Claimant testified that the problems she had with her right hand improved during this time. Claimant went back to work for the employer in September 1997 doing "a lot of name and address things and not numeric keying." Claimant testified that from July 1995 until December 1998, she still had some symptoms such as "dropping things and numbness at times, but not pain all the time . . . unless I was typing a lot." At some time after June 1995 and before December 1998, the employer changed carriers from carrier F to carrier H. When claimant was asked why she did not seek medical treatment from July 1995 through December 1998, claimant said that Dr. S told her that regarding those problems "there was nothing else he could do for me. And it was just something that I had to live with." Claimant testified that in December 1998, her job duties changed and that she did "a lot of numeric keying, and that's when I started having problems." Claimant testified that she began to have pain shooting up into her arms and shoulders "about two weeks after the numeric keying increased." Claimant testified she had more numbness with greater severity. Claimant said that she went back to Dr. S on January 25, 1999, and that Dr. S took her off work. Claimant did not have any additional surgery and went back to work in a one-doctor office doing general clerical work on April 27, 1999.

Dr. S's office note of January 25, 1999, notes that claimant was in "with a recurrence of her right [CTS]" and that she has had "increasing numbness and discomfort over the last several weeks." The off-work slip notes "recurrent ® CTS." In a letter dated February 16, 1999, Dr. S remarks:

> I do feel that her recent recurrence of her [CTS] is a recurrence of the same problem for which she was treated in 1994 and for which she showed a slight recurrence in 1995. According to the patient, there has been no additional injury since that time.

Additional EMG testing was recommended. An EMG study performed April 1, 1999, showed "very mild" CTS and "no change compared to 7-12-95." In an office note dated April 7, 1999, Dr. S notes the EMG was "negative, showing only minimal changes similar to her previous study," and that her IR "is essentially unchanged from that performed on July 28, 1995."

On a form dated (1999 injury), completed for carrier H, claimant said she knew she had CTS "but symptoms have been manageable until know [sic, now]. The pain is worse whenever I am typing." In a peer review report dated February 27, 1999, Dr. J, carrier F's peer review doctor, reviewed claimant's medical record and was of the opinion:

> This is definitely a new occurrence due to the time span from June/July 1995 without indication of interim symptoms or treatment to the present time. Once again, a definite current diagnosis of CTS has not been established by the available medical records.

The hearing officer, in his Statement of the Evidence, comments that Dr. J's report is "not persuasive" because it was based on the erroneous assumption that claimant was symptom free from July 1995 to December 1998.

As previously noted, the issue was framed as being whether the compensable 1995 injury was a producing cause of the 1999 injury. Carrier F seeks to reframe the issue as being whether the 1995 injury was the sole cause of the 1999 condition. Although carrier H appeared to accept that description, the hearing officer made his finding based on the announced issue from the benefit review conference. We do not agree that the hearing officer accepted carrier F's proposition that the issue was changed to a sole cause issue and therefore we find no error by the hearing officer in not making sole cause findings. We believe the more accurate question is whether claimant's 1999 CTS is a continuation of the 1995 injury, or a totally new injury. The hearing officer clearly found claimant's current condition to be a continuation of her 1995 injury based on the uncontroverted testimony that claimant continued to have symptoms (numbness, dropping things, and pain when typing) throughout the period of July 1995 to December 1998 when those symptoms got worse. Further, the EMG testing showed no significant change and Dr. S was of the opinion the IR was unchanged. We have frequently noted that whether a claimant has sustained a new injury or merely suffered a continuation of an original injury is a question of fact to be determined by the fact finder. Texas Workers' Compensation Commission Appeal No. 93515, decided July 26, 1993; Texas Workers' Compensation Commission Appeal No. 962272, decided December 18, 1996. The fact that a claimant continues to have pain or symptoms after returning to work does not automatically transform a prior injury into a new injury. Appeal No. 962272. In this case, the hearing officer's findings that the 1995 injury is a producing cause of the 1999 condition and that claimant does not have a new 1999 injury is supported by the evidence.

Nor do we find the hearing officer's Finding of Fact No. 7 where he finds that the 1999 injury (or rather continuation) was the cause of claimant's inability to obtain and retain employment in 1999 to be "irreconcilable" with the rest of the decision and order. The hearing officer quite obviously meant that the 1999 flare-up of the 1995 injury was the cause of claimant's unemployment from January18 through April 26, 1999.

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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge