

APPEAL NO. 991139

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 May 4, 1999. The single issue at the CCH was whether the respondent (claimant) had disability from September 10, 1998, to the date of the hearing. The hearing officer, in an apparent typographic error, found that the claimant had disability from September 10, 1997, to May 4, 1999, the date of the CCH. Appellant (carrier) urges that there was error in the date of September 10, 1997, as it was not within the issue, was not advocated by either party, and was not supported in the evidence, and asks that the error be corrected to show the date of September 10, 1998. Carrier also urges error in the determination that the claimant sustained any disability during the period in issue, arguing that the carrier was in judicial litigation over the issue of a compensable injury having been sustained or that there was any resultant disability. Carrier further urges that the evidence does not support disability during the period of September 10, 1998, to the date of the hearing. Claimant responds, agreeing with a typographical error having been made but also urging that there is sufficient evidence to support disability from September 10, 1998, to May 4, 1999.

DECISION

Affirmed, as corrected.

The claimant sustained a compensable injury in \_\_\_\_\_ with disability having been found through September 9, 1998, as affirmed in Texas Workers' Compensation Commission Appeal No. 982411, decided November 23, 1998. This case is apparently on judicial review but does not affect this CCH. In any event, the claimant had cervical surgery in March 1998, had undergone physical therapy, and had not returned to work at the time of the CCH. She testified that she had just completed a rehabilitation program called PRIDE and that she is to be returned to work just after the CCH. She has been under the care of Dr. T, who had not released her to work and who has issued no work certificates. Dr. T's medical report generally documents chronic pain disorder and tendinitis (along with other conditions, stress, and depression) and his referral of the claimant to the PRIDE program. An EMG in February showed no evidence of cervical radiculopathy, plexopathy, myopathy or carpal tunnel syndrome.

Initially we agree with the parties that the hearing officer apparently made a typographical error and we correct it by changing the beginning date of the disability in this case to be September 10, 1998. The hearing officer also determined that the claimant has disability from September 10, 1998, to the date of the CCH, May 4, 1999. Reviewing the testimony of the claimant and the medical records, we find minimally sufficient evidence to support that determination. While the lengthy recovery period taken in this case, other apparently unrelated physical/mental conditions, and the dearth of supportive objective tests could lead another fact finder to arrive at different inferences from those found most reasonable by this hearing officer, this is not a sound basis to set aside factual findings or reverse a decision. Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994.

Not being able to conclude that the determination of the hearing officer (as corrected) was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Lopez v. Hernandez, 595 S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ).

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge