

APPEAL NO. 991220

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 17, 1999. He determined that the respondent (claimant) sustained a compensable injury to her left middle finger on \_\_\_\_\_, and that she had resulting disability from January 7 to January 12, 1999, and from February 16 through March 10, 1999. The appellant (carrier) appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant worked as a sewing machine operator for a garment company. The evidence indicates that on (prior date of injury), she sustained an injury in the nature of left carpal tunnel syndrome. On (second date of injury), she sustained a work-related needle puncture injury to the lateral portion of the distal phalanx of the left middle finger, described by the claimant as the tip of the finger, which apparently resulted in some infection. She was off work as a result of this second injury until September 9, 1998. She continued working until some unspecified Christmas break and returned to work after the Christmas break on January 4 or 5, 1999. She received a zero percent impairment rating for the puncture injury and reached maximum medical improvement on October 28, 1998.

The subject of these proceedings is the claim of a separate repetitive trauma injury to the left middle finger on \_\_\_\_\_. The claimant testified that on this day she was using both hands to sew when the "lower part" of the finger began to swell. An examination by Dr. L on January 13, 1999, found diffuse swelling and pain with flexion of the left middle finger. The diagnosis was a sprain of the metacarpophalangeal joint. The claimant was prescribed a splint and placed on restricted duty with limited use of the sewing machine. The claimant testified that she was off work from January 7 to January 12, 1999, because the company nurse would not allow her to return to work without a doctor's release. According to the claimant, she worked from January 12, 1999, until February 16, 1999, was off work and then returned to work on March 11, 1999. At one point in her testimony, she said she believed she could work between February 16 and March 11, 1999, but without a release was not allowed to work. At another point, she said, she could not say that she could work during this time because she was not given the chance. She said she needed both hands to do her job. In a letter of April 5, 1999, Dr. K, apparently a treating doctor, wrote that the (second date of injury), injury involved the finger tip and the \_\_\_\_\_, injury involved the proximal phalanx and metacarpal phalangeal joint and that these "should be considered separately."

The claimant had the burden of proving that she sustained an injury to her left middle finger on \_\_\_\_\_, as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The position of the carrier was that there was no injury on \_\_\_\_\_, or that the condition of the finger on that date was a continuation of her injury on (second date of injury). With regard to the defense of no injury, the carrier points to an MRI of the finger taken on January 5, 1999, one day before the claimed new injury, which showed no evidence of soft tissue damage or bone tumor masses. Given this evidence, it argued that it was unlikely that the claimant sustained a repetitive trauma injury the next day. The claimant described repetitive motion involved in meeting her production quotas. The hearing officer found her credible in these assertions and determined that her job activities did constitute sufficient repetitive trauma to constitute an injury. He further found that a puncture wound to the tip of the finger was not essentially the same as a sprain to the lower joints of the finger and that the two injuries were not related. These matters presented factual questions for the hearing officer to determine. 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 these determinations.

Whether the claimant had disability was also a question of fact for the hearing officer to decide. In this case there was medical evidence of a return to light duty and testimony from the claimant that she could work, but was not allowed to until released by a doctor, or that she did not know if she could work because she was not allowed to during the time periods found by the claimant. We note that a release to light duty does not end disability unless there is a return to actual work at preinjury wages. See Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. This evidence was, we believe, sufficient to support the finding of disability.

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

Alan C. Ernst  
Appeals Judge

CONCUR:

Tommy W. Lueders  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge