

APPEAL NO. 991412

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 June 3, 1999. He (hearing officer) determined that the respondent's (claimant) left carpal tunnel syndrome (CTS) was a result of the compensable injury of _____, and that the claimant had disability from July 24, 1998, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant worked as a packer and quality inspector of light switches. She said that her job included making sure the switches worked properly by flicking each switch. She worked 10-hour days, four days off and four days on, and estimated inspecting between 16,000 and 22,000 switches per day. The carrier has accepted liability for a left trigger thumb, caused by repetitive trauma at work, but disputes that the compensable injury also included left CTS. Trigger release surgery was performed by Dr. D on March 31, 1998.

The claimant first saw Dr. B for this injury. His Initial Medical Report (TWCC-61) of a February 19, 1998, visit diagnoses a trigger finger and notes no complaints other than the thumb. The claimant testified that she also complained of hand pain radiating up the shoulder, which, she said, was present from the date of injury. She said she mentioned this to Dr. B on her first visit, but he said he would treat the thumb first. Dr. B referred the claimant to Dr. D. Dr. D's early reports also refer only to a trigger thumb diagnosis. When the trigger release did not ease the pain, the claimant said, she underwent further tests and was diagnosed with left CTS. The first diagnosis of left CTS appears in a report of Dr. D of April 10, 1998. In a letter of June 13, 1998, Dr. D wrote that over the last several weeks her hand pain increased and the claimant "tells me that she has had that problem in the past and did feel that it was related to her work activities which did aggravate it and I can only tell you that from her history." He concluded that the CTS "seems to be caused by her work."

The claimant had the burden of proving that she sustained a compensable left CTS injury on _____. Whether she did was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The date of this injury was not an issue before the hearing officer, and the carrier does not dispute a diagnosis of left CTS or that it may be work related, but argues essentially that on _____, she sustained only a left trigger thumb injury, not this CTS. In making this assertion, it refers to the late appearance of a reference to the left CTS in the medical records and Dr. D's comments that the CTS pain worsened after the trigger

release. The claimant had no explanation for the lack of a mention of the left CTS earlier in the medical records, but insisted she told Dr. B about it and then left her care to him. While clearly different inferences could be reached from this evidence, we believe that the claimant's testimony and the opinion of Dr. D which related the left CTS to work activities, provided sufficient evidentiary support for the hearing officer's determination that left CTS was part of her compensable injury of _____. Under our standard of review, we decline to reverse that determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In its appeal of the disability finding, the carrier argues that the trigger finger had resolved by July 22, 1998, and that a videotape showing the claimant engaged in some physical activity at a video store established that she had "the physical ability to work whether or not the [CTS] is included under the _____, date of injury." Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Some physical activity is not inconsistent with disability and the claimant denied she was paid any wages by the video store. Dr. D's records of June 19, 1998, refer to the claimant's date of return to limited work as "not applicable at this time," but on July 30, 1998, this is changed to "[t]o be determined." On March 16, 1998, before the diagnosis of left CTS appeared, Dr. B noted that the claimant could return to limited work, but not to full-time work. The claimant testified that she asked the employer if there was work for her and was told that, due to her restrictions, no work was available. Whether disability existed as claimed by the claimant was a question of fact and could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We believe the testimony of the claimant and medical evidence of, at best, a limited duty release, at least as of July 30, 1998, provide sufficient evidentiary support for the finding of disability. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991.

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

Dorian E. Ramirez
Appeals Judge