

## APPEAL NO. 991518

Following a contested case hearing held on June 10, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the compensable injury sustained by the appellant (claimant) on \_\_\_\_\_, does not extend to thoracic outlet syndrome (TOS) or reflex sympathetic dystrophy (RSD), and that claimant did not have disability from December 17, 1998, to the present. Claimant appeals these conclusions and all the substantive factual findings, asserting, essentially, that her doctors' reports met her burden of proof. The file does not contain a response from the respondent (self-insured).

### DECISION

Affirmed.

We note that although the hearing officer made findings of fact that on \_\_\_\_\_, the date of the injury, claimant was the employee of (Company), employer, and that the employer provided workers' compensation coverage through self-insurance, those facts were not stipulated and no documents were introduced to establish them. However, since neither party has appealed these findings, we need not take any action.

No testimony was taken at the hearing and the parties submitted their respective cases on their documentary evidence and arguments. It was apparent at the beginning of the hearing that claimant expected Dr. B to appear for testimony and five minutes into the hearing the hearing officer recessed the hearing for five minutes to "give your witness time to show up." The hearing then reconvened, claimant made an opening statement, the self-insured reserved its opening statement, and the parties introduced their exhibits. Claimant then left the hearing room to see if Dr. B had arrived and returned to the hearing room indicating Dr. B was not present. Claimant said that Dr. B was the only witness she intended to call and stated that since Dr. B "was not going to be showing up or allowed to testify," then she would ask at the time for a continuance because the medical evidence is crucial. The hearing officer denied the request whereupon claimant made her closing argument. Claimant's appeal mentions this matter and we address it at the end of the decision.

In evidence is a Benefit Dispute Agreement (TWCC-24) dated December 16, 1998, reflecting the parties' agreement that claimant had disability from June 16 to December 16, 1998. Also in evidence is a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated October 27, 1998, and prepared by (administrator), apparently a third-party administrator, stating that the work-related injury is limited to the left hand and that the self-insured disputes that the injury extends to "the right hand diagnosed with [RSD], carpal tunnel, and DeQuervain's disease." A TWCC-21 dated November 30, 1998, states that the job-related injury is limited to the left hand contusion and that treatment of the left elbow and left shoulder is disputed. A TWCC-21 dated April 6, 1999,

states that entitlement to benefits for any area other than the left wrist is disputed and that the diagnoses of TOS and RSD are not related to the original compensable injury.

The medical records reflect that claimant was seen by Dr. T on \_\_\_\_\_, giving a history of sustaining a blow to the left hand and complaining of pain over the thumb and navicular portion of the hand and wrist; that x-rays showed a subtle defect in the navicular but were not conclusive for fracture; and that Dr. T diagnosed left hand and left wrist contusions. On June 26, 1998, Dr. S, to whom Dr. T referred claimant for a consultation, reported that claimant had struck the radial side of her left arm; that she has had persistent pain and tenderness since \_\_\_\_\_; that his diagnosis is left DeQuervain's tenosynovitis; and that he injected the injury site and continued her use of the wrist splint. Claimant visited an emergency room (ER) on June 27, 1998, giving a history of hitting and twisting her left thumb 11 days previously, of receiving a cortisone injection on June 26th, and of having wrist and hand pain. Dr. S's records reflect that the left DeQuervain's release surgery he had scheduled for July 29, 1998, was canceled. An ER record of October 30, 1998, stated the principal diagnosis as DeQuervain's tenosynovitis, left upper extremity, and the secondary diagnosis as carpal tunnel syndrome (CTS), left wrist.

In evidence is an Employee's Request to Change Treating Doctors (TWCC-53) reflecting that on August 11, 1998, the Texas Workers' Compensation Commission (Commission) approved claimant's request to change treating doctors from Dr. T to Dr. B. A September 24, 1998, EMG report of Dr. B states the clinical summary as "history of neck and arm pain" and the impression as a normal study and no neuropathic or radicular distribution abnormalities noted. Dr. B's November 6, 1998, report states that a bone scan showed evidence of a possible fracture of the left wrist with no RSD, that the assessment is a history of DeQuervain's disease and probable left wrist fracture, and that claimant is to see Dr. M.

Dr. M reported on November 16, 1998, that his impression is severe DeQuervain's disease and left CTS; that claimant needs a left carpal tunnel release and DeQuervain's release, which he will schedule; and that he does not think claimant has enough symptoms or signs of RSD to warrant a sympathetic block. Dr. M reported on February 4, 1999, that electrodiagnostic studies confirm left side CTS; that claimant's diagnosis remains left CTS and DeQuervain's tenosynovitis; and that the surgery he recommended cannot be done at that time because claimant is pregnant.

In a February 19, 1999, "IME Report" to (carrier), Dr. F states that on \_\_\_\_\_, while sizing a tool at work, claimant struck the tool and the hammer hit the wrench and also deflected onto her left thumb area. Dr. F set out claimant's post-injury course of treatment and testing and the results of his physical examination, noting that claimant was then two months pregnant. Dr. F stated his impression as "left hand pain" which he characterized as "appear[ing] to be somewhat multifactorial." Dr. F further reported that "there may be some early symptomatology consistent with RSD" but that this does not appear to be evolving and is manifested only by claimant's having given a history of temperature and perspiration changes in her hand; that claimant does appear to have findings suggestive of

DeQuervain's disease; that there is some suggestion of some carpal tunnel irritation but that the EMG does not support significant entrapment neuropathy; and that the neurologic examination is without evidence of focal or lateralized abnormality. Dr. F further stated that he felt it appropriate that claimant continue with restricted activities using the left hand until more definitive aspects are worked out; that repeat nerve conduction studies may be beneficial in delineating whether there has been any change from the September 1998 study; that orthopedic reevaluation for hand surgery for the DeQuervain's disease would appear appropriate; and that physical therapy "with particular attention to [RSD] protocol would additionally be in order in this patient." Dr. F reported on May 14, 1999, that claimant's pregnancy could be having "a mild aggravating affect on mild tendinitis or CTS" but that the EMG and nerve conduction findings indicated no major nerve root or peripheral nerve entrapment; that repeat EMG and conduction testing should be deferred during claimant's pregnancy; and that he found no clear evidence to suggest that claimant is suffering from recurrent TOS.

Dr. KB peer review report of April 15, 1999, states that in June 1998 claimant appeared to have sustained no more than a soft tissue injury to the left hand and wrist; that all the diagnostic studies were negative for any acute structural pathology and supported no more than the initial diagnosis of DeQuervain's tenosynovitis; that the initial electrodiagnostic study on September 24, 1998, was completely negative and without evidence of peripheral neuropathies or nerve entrapment syndromes; that repeat electrodiagnostic studies on January 21, 1999, indicated a left CTS which cannot be correlated with the original injury since the initial study was negative; that with pregnancy there can be fluid retention and other physiological changes; and that CTS can be associated with pregnancy. Dr. KB felt that there was reason to consider symptom magnification given the content of Dr. F's report. Again referring to Dr. F's report, Dr. KB stated that the objective physical examination supports some discomfort in the left thumb at the base but that, in her opinion, there was clearly no evidence of RSD. Dr. KB also stated that claimant should have returned to work within 10 to 14 days following the injury; that from a conservative treatment standpoint, claimant has reached maximum medical improvement (MMI); that if a DeQuervain's release is done, a relatively minor procedure, MMI would be reached thereafter in three months; and that there is no medical reason why claimant could not return to work in some capacity effective immediately.

In addition to the aforementioned conclusions of law, claimant challenges factual findings that on \_\_\_\_\_, she sustained a soft tissue injury to her left thumb and left hand; that the injury is limited to the left thumb and left hand; that the injury does not extend to or include TOS or RSD; that there is no causal relationship between claimant's alleged TOS and the compensable injury of \_\_\_\_\_; that there is no causal relationship between claimant's alleged RSD and the compensable injury of \_\_\_\_\_; and that claimant's unemployment after December 16, 1998, is not the result of the compensable injury sustained on \_\_\_\_\_.

Claimant had the burden to prove that she sustained the claimed injury, that is, that her \_\_\_\_\_, injury extended to TOS and RSD, and that she had disability as that term is

defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). Further, because the causation of TOS and RSD are generally matters beyond the common knowledge and experience of lay persons, proof that claimant's compensable injury of \_\_\_\_\_, extended to TOS and RSD required expert medical evidence. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In her appeal, claimant states that "if the insurance people would not have denied the MRI and other medical things" her doctor was trying to do, she would have had the proof. We note that appeals of the denial of medical treatment and tests are made to the Commission's Medical Review Division. Claimant further states that she feels she "lost because [Dr.B] could not show up for the hearing," that the hearing officer denied a request for a continuance of the hearing, and that "if he would have been there I would have the proof." Dr. B wrote the Commission directly on July 13, 1999, stating that claimant "developed a crush injury to the wrist," that claimant "developed median neuropathy and intractable pain, affecting the entire right [sic] arm," that she "has lost the use of the arm and has developed contractures as well as a diffuse pain syndrome," that "the development of chronic pain after a crush injury is a common phenomenon called RSD," and that claimant "is not able to work at this point or use her right [sic] arm." Section 401.203(a)(1) provides that the Appeals Panel shall consider the record developed at the hearing. Consequently, documents not in evidence will not be considered on appeal. See Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992; Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995. In our view, Dr. B's letter does not meet the criteria for newly discovered evidence mentioned in Appeal No. 92400, *supra*.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Thomas A. Knapp  
Appeals Judge