

APPEAL NO. 991894

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 August 4, 1999. He (hearing officer) determined that the appellant's (claimant) compensable injury of _____, did not extend to an injury to the neck, shoulders, elbows, reflect sympathetic dystrophy (RSD), and depression; that the claimant reached maximum medical improvement (MMI) from her compensable bilateral carpal tunnel syndrome (BCTS) injury on January 6, 1998, and has a zero percent impairment rating (IR) as certified by Dr. G, the designated doctor selected by the Texas Workers' Compensation Commission (Commission); and that the claimant did not have disability after February 14, 1998. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, is supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked on the employer's assembly line. The carrier has accepted as compensable a BCTS injury with a date of injury of _____. Carpal tunnel releases were performed on July 21 and October 1, 1997. According to the claimant, she first sought medical care from her group health insurance physician and was referred to Dr. K by her employer. Dr. K's report of her first visit on June 5, 1997, reflects complaints of swelling, numbness, and pain in both hands. Based on nerve conduction studies on June 18, 1997, Dr. K diagnosed BCTS and possible de Quervain's syndrome. The claimant testified that she regularly reported neck and shoulder pain to Dr. K. Not until an office visit of October 7, 1997, does Dr. K record complaints of discomfort in the chest and soreness "which she did not have before the surgery." At an October 18, 1997, visit, she is reported to have inquired about a "sensation of tiredness in her upper arms." Dr. K responded to her that he did not have an explanation for this. On November 18, 1997, Dr. K released her to return to work without restrictions effective November 24, 1997. Apparently, on referral from Dr. K, Dr. T saw the claimant on December 16, 1997. He noted continuing median and ulnar neuropathy, which he associated with "activity related fatigue in the forearms and hands bilaterally." He also wrote that the claimant denied other neuropathy, myopathy, or dystrophy, and any history of cervical injury or radicular symptoms. On December 18, 1997, Dr. K completed a Report of Medical Evaluation (TWCC-69) in which he certified December 17, 1997, as the date of MMI and assigned a zero percent IR. His diagnoses were BCTS and de Quervain's syndrome. In an attached report, Dr. K noted "some episodes of . . . discomfort radiating up the forearms," but found range of motion (ROM), motor function, and sensibility normal. At her last visit with Dr. K on January 6, 1998, the claimant reported pain shooting up her arms and a perception that her arms were sore and swollen. Again, Dr. K wrote that he had no explanation for these symptoms. The claimant testified that her last day of work was February 13, 1998, and that she could not work anymore because of pain in her hands and another personal medical condition.

On March 1, 1998, Dr. G, the designated doctor, completed a TWCC-69 in which he certified MMI on January 6, 1998, and also assigned a zero percent IR. He noted complaints of pain in the arms and shoulders. He based his IR on diagnoses of BCTS and possible overuse syndrome of both hands. He found ROM of the elbows and shoulders well within normal limits and a "detailed neurological examination including examination of the mental status, cranial nerves, and motor, sensory, or reflex systems was otherwise unremarkable."

The claimant began seeing Dr. J on October 10, 1998. He noted complaints of a severe dull ache in both hands. His diagnoses included RSD of both upper extremities.

The claimant then saw Dr. M for pain management purposes over a period of time. In his latest report of June 17, 1999, Dr. M noted complaints of severe pain over the cervical areas and over the bilateral upper extremities and depression "secondary to the lack of progress of her case, the chronicity and severity of her pain, and the fact that nobody seems to care that she is in severe pain and that she is crippled secondary to the severity of her symptoms." His diagnoses included RSD of both upper extremities, bilateral cervical facet syndrome, myofascial pain syndrome, cervicogenic headaches, and depression secondary to chronic pain.

On August 20, 1998, Dr. X completed a records review of the claimant at the request of the carrier. He observed that the findings of Dr. G and Dr. K "really do not correspond at all with the findings" of Dr. M and Dr. J. Dr. X concluded that "it is quite unlikely that this claimant developed bilateral upper extremity [RSD], and in my opinion she was being over treated by [Dr. M] and [Dr. J]." Any RSD after Dr. G's examination was, in Dr. X's opinion, "not related to her work injury." On June 23, 1998, Dr. P completed a similar records review at the request of the carrier. Based on this information, he could not conclude that the upper extremity problems "are due to the results naturally occurring from the alleged injury of _____." He also concluded that the claimant had a "chronic regional pain syndrome," a descriptive term he preferred to RSD.

The claimant had the burden of proving that her compensable injury of _____, extended to the other claimed injuries and conditions. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93833, decided October 25, 1993. Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The position of the claimant was that her original repetitive trauma injury included the neck, shoulders, and elbows and relies on her medical evidence to establish this. In support of this position, she said that she regularly made these complaints to Dr. K and could not explain why they did not appear in his medical reports. In evaluating the evidence concerning these complaints, the hearing officer commented that the "medical records do not support a finding of specific discrete injury to the neck, nor the shoulders, nor the elbows." He further points to the opinions of Dr. G, Dr. T, and Dr. K and associated medical tests to support his findings that the

compensable injury did not extend to the neck or bilaterally to the shoulders and elbows and questions the persuasiveness of Dr. J and Dr. M's presumably contrary opinions. With regard to the assertion that RSD was part of the compensable injury, the hearing officer undertook a similar analysis of the evidence and found Dr. G and Dr. K's opinions that the claimant was essentially normal more persuasive than Dr. M's later opinion. He concluded that "there is insufficient evidence to connect the Claimant's RSD diagnosis to the work-related injury sustained as of _____."

With regard to the claimed follow-on psychological injury of depression, the hearing officer pointed to what he described as a "fatal paucity of medical evidence to establish that the claimant is suffering from psychological injury and that such an injury was caused by the compensable injury of _____." In Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, the Appeals Panel stated "[a]lthough the claimant may not have experienced a psychological problem but for the fact that a back injury occurred in February 1991, and set in motion a protracted dispute resolution process, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred." Thus, it is not enough that the psychological problem is traceable to the circumstances of the injury, they must be the result of the injury. In the case we now consider, Dr. M pointed to pain as a causative agent in the claimant's depression. The hearing officer, consistent with his refusal to give much credibility or persuasiveness to Dr. M's opinion, found that the claimant failed to prove that her injury was a cause of her depression, the implication being that the depression, to the extent he believed it existed, was the result of the circumstances of attempting resolution of this claim.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. This includes the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer simply found Dr. G and Dr. K, and to a degree Dr. T, more persuasive and credible than the other doctors, particularly Dr. M and Dr. J. 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 decline to substitute our opinion of the credibility of the evidence for that of the hearing officer. Rather, we find the opinions of Dr. G, Dr. T, and Dr. K, deemed credible and persuasive by the hearing officer, sufficient evidence to support his extent of injury determination. In so doing, we note that the finding of no neck, shoulder, or elbow injury does not preclude medical treatment for the compensable BCTS injury that may or may not refer pain to these other areas of the body.

The claimant also appeals the determinations that she reached MMI on January 6, 1998, and has a zero percent IR as certified by Dr. G, the designated doctor. To the extent that this appeal is premised on the compensable injury including the other conditions alleged, we find no merit in this position in light of our affirmance of the extent-of-injury determination. The report of Dr. G is entitled to presumptive weight and the Commission is

to base its determination of MMI and IR on this report unless the great weight of the other medical evidence is to the contrary. Sections 408.122(c) and 408.125(e). Dr. K provided the only other date of MMI and IR, which was consistent with Dr. G's certification. As discussed above, the hearing officer discounted the other medical evidence. In addition, the statements in the medical evidence that the claimant had not reached MMI could be construed as premised on the additional conditions as being part of the compensable injury. Under our standard of review, we find the evidence sufficient to support the hearing officer's resolution of the MMI and IR issues.

There remains the disability issue. Section 401.011(16) defines disability as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." There was evidence that Dr. K returned the claimant to full duty on November 24, 1997, and that the claimant was earning her preinjury wages through February 13, 1998. At this time she stopped working because of a personal medical problem, the circumstances of which she did not divulge, and, she asserted, also because of her compensable injury, which to her included the extended conditions discussed above. Whether disability exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Apparently, there was no dispute about disability up to the time of the claimant's return to work. The return to full duty from Dr. K along with the fact that the claimant actually earned her preinjury wage for some three months and the circumstances of her departure from work, including both a personal medical problem and other conditions found not to be part of the compensable injury, constitute, in our opinion, sufficient evidence 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:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge