APPEAL NO. 000006

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 November 29, 1999. The hearing officer determined that the appellant's (claimant) right carpal tunnel syndrome (CTS) was a result of his compensable injury of _____, but that the claimant did not have disability. The claimant appeals the disability determination, expressing his disagreement with it. The respondent (carrier) replies that this determination is correct, supported by sufficient evidence, and should be affirmed. The extent-of-injury finding has not been appealed and has become final. Section 410.169.

DECISION

Reversed and remanded.

The claimant worked for a business owned by his brother. It was not disputed that he sustained a compensable crush type injury to three fingers of his right hand on _____. In an unappealed finding the hearing officer determined that the injury included right CTS. The claimant received medical treatment at a clinic on the day of the injury and embarked on a course of physical therapy into August 1998. Although clinic records reflect that he was placed in an off-work status by the doctor, the claimant returned to work and his former position within five days, according to some evidence, at the insistence of his brother. This job included both supervisory and production work. On May 6, 1999, his brother relieved him of the supervisory duties and assigned him work solely as a process engineer. The claimant said he continued to have pain which increased with his new assignment. After an incident of a loud and somewhat hostile discussion between the claimant and another brother also working there, the claimant was disciplined with a few days of leave without pay. He then sought the advice of an attorney (since discharged) who referred him to Dr. M. Dr. M imposed duty restrictions of "[r]egular work but is to take 30 minutes breaks every two hours." Eventually, on August 20, 1999, there was added a 15-pound lifting limit to this restriction. The claimant stopped working on May 17, 1999, and claims disability from that date.

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." Whether disability exists is a question of fact for the hearing officer to decide and can be established by the testimony of the claimant alone if found credible by the hearing officer." Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Although much evidence about an offer of light-duty employment was introduced at the CCH, this was not an issue before the hearing officer. The issue of disability is somewhat complicated in this case by the existence of a light-duty release and absence of a full-duty release; the claimant's work history after the injury; the change in jobs, which according to the claimant involved more use of his hands; and some evidence of personal hostility between the claimant and his brothers. There was other evidence in connection with the

claimant's contacts with the U.S. Department of Labor and over a claim of a CTS injury with a different date that may or may not have been withdrawn.

The hearing officer made the following dispositive finding of fact, which the claimant has appealed: "The evidence presented is insufficient to establish that Claimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage is a result of the compensable injury." Finding of Fact No. 3. The only explanation for this finding is the comment of the hearing officer that "[i]n correspondence dated July 1, 1999, claimant indicated that there was no record stating that he was unable to perform the essential functions of his position." The letter referred to was in the context of a series of letters between the claimant and the employer haggling over the terms of a possible light-duty position. In the same letter the claimant refers to his doctor's restrictions. While this letter is admittedly problematic and it is difficult to establish what exactly it means, we do not believe that this one sentence in itself can be interpreted as controlling on the disability issue in light of the other medical evidence and the claimant's own testimony. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Clearly, the hearing officer is entitled to accept or reject any of the evidence, including the medical evidence. His decision and order provide no clue as to what of this evidence he may have rejected and whether the claimant did or did not have work restrictions after his employment ceased. For this reason, we reverse the finding of no disability and remand for further findings of underlying facts that explain why the claimant does or does not have disability. For example, if the hearing officer rejects the claimant's testimony and/or Dr. M's work limitations, this should be made clear in the decision and order. *See* Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, and Texas Workers' Compensation Commission Appeal No. 970876, decided June 27, 1997.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Workers' Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge