

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 December 16, 1999. The hearing officer determined that the respondent's (claimant) compensable injury of _____, included her right upper extremity and wrist and that she had disability from July 12 to 14, 1999, and from July 22, 1999, through the date of the CCH. The appellant (carrier) appeals this determination, contending it is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as an envelope machine operator. Her duties involved boxing envelopes and sending them down the production line. On _____, she said, her right arm hurt "real bad." She was initially seen at a hospital and then by Dr. F on July 14, 1999. He diagnosed right epicondylitis. According to Dr. F's records, the claimant missed two subsequent appointments, so Dr. F discharged her and on August 4, 1999, completed a report in which he added shoulder tenosynovitis/bursitis to the epicondylitis diagnosis. The claimant was then seen at a clinic where the diagnosis included only the epicondylitis. The report of her visit on August 2, 1999, refers to complaints of right shoulder pain. An orthopedic evaluation by Dr. O on October 7, 1999, included a diagnosis of supraspinatus syndrome of the right shoulder. An MRI of the right wrist on October 1, 1999, suggested a tear of wrist cartilage. An MRI of the right shoulder on this date was normal. The carrier has accepted only the epicondylitis injury as compensable.

The claimant had the burden of proving her compensable injury included the right wrist and upper right extremity. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did so was a question of fact for the hearing officer to decide and, due to the nature of the claimed injuries, could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer considered the evidence, including the claimant's testimony and the medical records of Dr. F which at first refer only to a right elbow injury and later note a "shoulder problem," and concluded that the claimant established that her compensable injury included the right wrist and shoulder. In its appeal of this determination, the carrier describes the hearing officer as "misguided," argues that the claimant had no credibility, and stresses that the claimant only produced evidence of complaints of pain, not evidence of an injury. See Section 401.011 (26). Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. He obviously found the claimant credible. Although, as stated above, the claimant could establish the extent of her injuries in this case through her own testimony, there was later developed medical evidence that, if accepted as true by the hearing officer, could support a finding of injuries to the wrist and shoulder and not merely

symptoms of pain. 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 in this case, we find the evidence sufficient to support the extent-of-injury determination and affirm it.

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 wages." Whether disability existed was also a question of fact which could be proved by the claimant's testimony alone if found credible. Appeal No. 93560, *supra*. The claimant testified that she received a limited-work release from the hospital which included, as written, no overhead lifting. The claimant also testified that her doctor told her she needed a 15-minute break every hour. This added restriction does not appear in any written work release. The claimant returned to work until she left employment on July 21, 1999, because, she said, her arm was still severely hurting and her employer would not abide by the restrictions. The carrier also stresses the August 11, 1999, medical report of Dr. I, apparently a new treating doctor, which in the history portion states that the claimant "is presently not working at this job for personal reasons." The claimant insisted she stopped working because of the pain in her right arm, not because of a "personal" reason. The hearing officer again considered the claimant credible and found disability as requested. The carrier appeals the disability determination, contending that the claimant's testimony as to the additional undocumented work restriction "strains credibility" and that she indeed left work for personal reasons, not because of her compensable injury. The evidence was in substantial conflict and subject to varying inferences. The hearing officer resolved these conflicts by finding that the claimant established disability. While another hearing officer may have found otherwise, under our standard of review, we find the evidence, including the testimony of the claimant, sufficient to support the disability determination.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge