APPEAL NO. 000197

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 10, 2000, a contested case hearing (CCH) was held. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from September 17, 1999, and continuing through the date of the CCH. Appellant (carrier) appeals the disability determination only, contending that it is against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant. The compensable injury determination has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant described her injury of _____, as "smashed fingers" on the left hand, which resulted in pain, numbness and swelling. She is right-hand dominant. An Initial Medical Report (TWCC-61) written by Dr. N of a visit on September 20, 1999, refers only to right arm and wrist pain. The report of Dr. H, D.C., on September 22, 1999, diagnoses only a bilateral wrist condition (sprain/strain, synovitis). In a medical note, on December 1, 1999, Dr. R described a complaint of a "smashed" left middle finger on _____, and a history of continued working until _____, when the claimant "smashed" her right middle and right ring finger. His diagnoses were a contusion of the mid finger of the left hand and of the third and fourth digits of the right hand, and a bilateral wrist sprain. In her written report of injury to her employer the claimant complained of pain, swelling, and numbness "in my finger and hand and pain in my arm." In a recorded telephone conversation on October 7, 1999, the claimant referred to both arms, hands, and fingers swelling up on _____, and stated that she "smashed" her left middle finger without specifying the date. At another point she said the "first thing that happened" was she smashed her finger and the pain started progressing up her arm, and over the next couple of days smashed her finger on her right hand. She further said in this statement that by September 17, 1999, she could not tie her shoes and could not drive to get to work because her "hands and arms were so swollen and everything." In her testimony, the claimant said that she complained of her left hand to all the doctors, but none wrote this down until Dr. R did so on December 1, 1999. She kept working after _____, she said, because she thought the swelling would go down. Instead, it got worse and she could no longer work after she smashed her right hand. She said her work required use of both hands and that since she cannot use both hands, she is no longer able to work.

The benefit review conference (BRC) report contains the issue: "Did the Claimant sustain a compensable injury on _____?". The claimant was reported to have had a "smashing" injury to both hands as well as a repetitive trauma injury. At the CCH, the claimant requested to add the issue of a compensable right hand injury, arguing that it was

discussed at the BRC. The carrier objected and the hearing officer refused to add this issue. This determination has not been appealed.

The hearing officer made the following, narrowly tailored finding on the nature of the compensable injury: "Claimant sustained a contusion to the mid finger of her left hand on _____ in the course and scope of her employment." Finding of Fact No. 2. This finding has not been appealed and is directly relevant to the appealed disability determination.

Section 401.011(16) defines disability as "the inability to obtain and retain employment at wages equivalent to the preinjury wage." Whether disability exists or not is a question of fact for the hearing officer to decide and can be proved by the testimony of the claimant alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We have also held that the claimant need only prove that the compensable injury is a producing cause of the inability to earn the preinjury wage, not the only cause. Texas Workers' Compensation Commission Appeal No. 961059, decided July 10, 1996.

A physician's assistant with Dr. N issued a 10-day restricted work release on September 20, 1999, which precluded repetitive movements of the right hand and arm and lifting over 10 pounds. Dr. H excused the claimant from work "in order to avoid an aggravation of her condition." His notes do not include the left middle finger in any diagnosis. Dr. R's diagnoses included the left middle finger contusion and a notation that the claimant "is to refrain from work at this time. She should continue a very active therapy program to increase circulation and comfort and reduction of edema of the digits and hands."

In this case, the claimant testified to a seemingly more extensive injury than a contusion to the left middle finger of the nondominant left hand, and the medical evidence, at least up to December 1, 1999, pays vastly more attention to a bilateral hand/wrist/arm condition. The claimant testified that she was no longer able to work after September 16, 1999, because of the condition of both hands.

The hearing officer considered the evidence and made the following findings of fact and conclusions of law on the disability issue:

FINDINGS OF FACT

5. Claimant continued to work despite the injury to the left hand until her right hand was also injured.

6. As a result of the injury to her left hand and the loss of full use of her right hand, Claimant has been unable to obtain and retain employment at wages equivalent to her preinjury wage beginning on

September 17, 1999 and continuing through the date of the hearing in this matter.

CONCLUSION OF LAW

4. Claimant has had disability resulting from the injury to her left hand beginning on September 17, 1999 and continuing through the date of the hearing in this matter.

In his discussion of the evidence, the hearing officer commented:

> Claimant is right hand dominant and it appears that she was able to work with the injury to her left hand until the injury to the right. When her dominant hand was no longer available, she was unable to continue due to the injury to the left.

This comment is consistent with the undisputed evidence that the claimant worked after the _____, injury until some additional injury occurred at work and her testimony that she could work with her injured left hand so long as her right hand was essentially normal.

The hearing officer clearly applied the doctrine that the compensable injury need only be a cause of the inability to earn the preinjury wage to find disability. What concerns us about this disability determination is that it is premised on a contusion injury to one finger, rather than a more extensive injury to the left hand (of which there was some evidence in the record) and the lack of an indication from the hearing officer that the left middle finger injury was more than a simple bruise, which one would expect to heal in a matter of weeks. Nonetheless, Dr. R, in his report of December 1, 1999, described the claimant's history of pain, swelling and discoloration of the left middle finger which persisted as of the date of his examination as "generalized edema and tenderness of the mid finger." According to this report and the claimant's testimony, this condition of the left middle finger coexisted with other painful conditions of both extremities and only got worse over time, which led to her not returning to work. His diagnosis, as stated above, based on this history and examination, included a "contusion of the mid finger left hand." From this we conclude that the evidence was sufficient to support a conclusion that, though described simply as a contusion, the compensable injury was more serious than a layperson might think and coexisted with other conditions that caused the claimant's inability to earn her preinjury wage beginning on September 17, 1999. 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 and recognizing that another hearing officer may have found otherwise, we believe the evidence was sufficient to support the appealed disability determination.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge