

APPEAL NO. 000316

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 January 26, 2000. The hearing officer determined that the respondent's (claimant) compensable injury of \_\_\_\_\_ (all dates are 1999 unless otherwise noted), extends to and includes an injury to the left shoulder, but it does not extend to and include urinary incontinence and that the claimant had disability beginning July 30th and continuing. The appellant (carrier) appeals these determinations, contending that there is insufficient medical evidence to support the finding of a shoulder injury and that claimant did not have disability from July 30th through August 23rd. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance. That portion of the hearing officer's decision that found that the compensable injury did not extend to and include urinary incontinence has not been appealed and will not be addressed further.

DECISION

Affirmed.

Claimant was employed by a temporary staffing leasing agency (employer) and was assigned to work at (company). On June 3rd claimant sustained an electrical shock while "jiggling the wires" in one of the company's transformers (as she had been instructed to do). The parties stipulated that carrier has accepted liability for an electrocution injury to claimant's left hand and arm. At issue is whether the injury also extends to the left shoulder. Claimant was sent to see Dr. B, who treated claimant and, in a report of June 3rd, released claimant to full duty. Claimant testified that she returned to work with the company but that the company accommodated her with light duty where she did not have to use her left arm. Claimant continued to see Dr. B several more times and then claimant either changed treating doctors or was referred to Dr. P, who saw her one time on July 15th. Claimant testified that her contract with the company expired on July 30th and that she informed the employer that she was still affected by the compensable injury and would not be able to work for another client company or return to the company. In a letter dated August 12th, from the employer to the claimant, the employer references messages left on claimant's answering machine offering claimant a position in a nearby town. Claimant denied receiving those messages. Claimant contends that she has been unable to work since July 30th. Claimant subsequently began seeing Dr. G on August 23rd and Dr. G has had claimant off work. Carrier has accepted that claimant had disability and began paying temporary income benefits effective August 23rd and continuing. At issue in this case is disability for the period from July 30th to August 23rd.

Claimant saw Dr. B on June 3rd, 10th and 28th, and, in reports of those dates, Dr. B described the electrical shock incident and recorded complaints of "aching of the left hand, arm and axillae." Claimant invited the hearing officer to take official notice of the term "axillae" in Dorland's Medical Dictionary as basically meaning armpit. Claimant saw Dr. P on July 15th and, in a note of that date, Dr. P gives a diagnosis of "[e]lectrocution injury to

the left upper extremity." Dr. P placed claimant on light duty (according to claimant, she was working at light duty for the company at the time). Claimant testified that she attempted to get an appointment with Dr. G but was unable to do so until August 23rd. Carrier emphasizes claimant received no medical care between July 15th and August 23rd. In a report dated August 23rd, Dr. G recited the history of an "electrocution injury" and recommended further diagnostic testing, which was complicated by the fact that claimant was then pregnant. An MRI of the left shoulder performed on September 24th was normal. Claimant was seen by Dr. S, carrier's required medical examination doctor, and, in a report dated October 27th, Dr. S noted a "left upper extremity electrocution injury" and the fact that claimant was three months pregnant complicated claimant's evaluation and treatment. Dr. S recommended evaluation by "an upper extremity neurosurgeon." In a handwritten note dated October 29th, Dr. G stated that claimant should remain off work from June 3rd to the present (October 29th). In a report dated November 23rd, Dr. G commented that claimant had lost her baby, was very depressed and concluded:

[Claimant] has suffered a very, very severe electrocution injury leaving her with residual pain in the left arm. The NCV's today really do not add much in regard to the diagnostic impression. With electrocution injuries, generally there is no objective or identifiable nerve damage. The damage is more on a cellular level and generally the pain phenomena that develops after an injury like this is related more to a reflex sympathetic dystrophy type phenomena.

Carrier had claimant's records reviewed in a peer record review by Dr. M, who, in a report dated January 13, 2000, responded to the question whether continued "treatment was reasonable and necessary as related to the work injury." Dr. M stated that if claimant continued to have left upper extremity pain continued treatment was reasonable and necessary.

The hearing officer found that the compensable injury extends to the left shoulder. Carrier argues that "where medical experts disagree as to the mechanism or causation of injury" expert medical evidence is required to establish causation and "claimant failed to present a shred of medical evidence that she even has a shoulder injury." We would note that most of the doctors diagnosed claimant with a "left upper extremity" injury and did not distinguish between the accepted left arm and the disputed left shoulder. Further, Dr. G, in her November 23rd report, comments on how electrocution injuries generally show "no objective or identifiable nerve damage." Conversely, carrier offers no medical evidence which stated that claimant does not have a left shoulder injury. Under the circumstances, where the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), we hold that the hearing officer's decision is sufficiently supported by the medical evidence.

Regarding disability, although Dr. B released claimant to full duty, subsequently, Dr. P, on July 15th, put claimant on light duty and claimant testified that she continued to be accommodated in her duties until July 30th. Whether claimant was unable to obtain and

retain employment at her preinjury wage due to the compensable injury (Section 401.011(16)) was a factual determination for the hearing officer to resolve. We have frequently noted that disability may be proven by a claimant's testimony alone, if believed, as the hearing officer clearly did in this case. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992; and Texas Workers' Compensation Commission Appeal No. 000237, decided March 22, 2000. Further, retroactive or not, Dr. G clearly opines that claimant was unable to work after the compensable injury and this is not inconsistent with claimant's testimony that she was accommodated in her job until July 30th and that she has been unable to work since. 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 for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Judy L. Stephens  
Appeals Judge