

APPEAL NO. 000369

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 January 18, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury in the form of an occupational disease on _____, and that the claimant did not have disability resulting from the injury sustained on _____. The claimant appeals, urging that the hearing officer's decision that the claimant did not have disability is against the great weight and preponderance of the evidence. The respondent (carrier) responds, urging affirmance. The hearing officer's decision that the claimant sustained a compensable injury in the form of an occupational disease has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that she worked as a pharmacy technician for the employer and during the year prior to _____, was required to enter prescription data information on a full-time basis. The hearing officer found that the claimant had mild tendonitis and neuritis in her wrists on _____, and that the claimant's tendonitis was sustained as a result of repetitive physical traumatic activities occurring over time in the course and scope of employment. The claimant asserted that she had disability from _____, through the date of the CCH.

The claimant testified that on _____, she sought medical treatment with her family doctor, Dr. S, because her hands were swelling. Dr. S diagnosed tendonitis and swelling in the claimant's left wrist and hand and released the claimant to return to work with wrist splints. Dr. S's record from August 12, 1999, states that the claimant presented for occipital headaches, neck pain, and forehead pain; that the claimant had no radiation to her arms or shoulders; and that the claimant had "been to chiropractors on her own." On June 24, 1999, the claimant sought medical treatment with Dr. V. Dr. V issued an Initial Medical Report (TWCC-61) with a date of visit of June 25, 1999, with an attached medical report which states that the claimant is "post injury" and has decreased range of motion, muscle spasms, and swelling in her hands. Dr. V took the claimant off work and prescribed chiropractic therapy and bilateral wrist supports. The medical records of Dr. V indicate that the claimant received treatment through December 1999. The claimant testified that at the time she discontinued treatment with Dr. V, he had not released her to return to work and that since then her symptoms have worsened.

The claimant admitted that she took a medical leave of absence from work from February 4, 1999, to March 24, 1999, for depression. The claimant testified that she has physical conditions unrelated to the injury, bipolar disorder and mitral valve prolapse, but that these conditions have not affected her ability to work. According to the claimant, she has been unable to work since _____, as a result of her repetitive trauma injury.

“Disability” is defined as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.” Section 401.011(16). The burden of proof is on the claimant to show that her disability was the result of her compensable injury. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993; Garcia v. Aetna Casualty and Surety Company, 542 S.W.2d 477 (Tex. Civ. App.-Tyler 1976, no writ). Generally, disability questions can be proven by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is not bound by the claimant's testimony or medical records.

The claimant argues that the doctor's opinions, the medical records, and the testimony indicate that the claimant had disability and the hearing officer may have relied upon a mistake on a date in Dr. V's records, which should have reflected June 24, 1999, instead of May 24, 1999. In her Statement of the Evidence, the hearing officer states:

Claimant testified she presented to [Dr. V], a chiropractor, after she initially saw [Dr. S]. However a progress note from [Dr. V] dated May 24, 1999 before she saw [Dr. S] reflects he was treating Claimant for some kind of wrist injury – “[the] patient remains status post injury. [M]anual traction to wrist bilateral three times each week - the patient is to return.” [I]t is clear Claimant had been seeing [Dr. V] prior to _____, the alleged date of injury and prior to seeking medical treatment from [Dr.S].

Dr. V's notes do indicate that he saw the claimant on May 24, 1999, and no evidence was presented from Dr. V's office to indicate that this was an error. Whether Dr. V's report of May 24, 1999, was dated incorrectly was not litigated at the hearing and the claimant raises this argument for the first time on appeal.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In her role as fact finder, the hearing officer could accept or reject all, part, or some of the evidence, including 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 determined that the claimant was not unable to obtain and retain employment at wages equivalent to her preinjury wage from _____, to the date of the hearing on January 18, 2000. The hearing officer considered the claimant's testimony and medical evidence indicating that she was unable to work, and did not find it persuasive. To the extent that Dr. V's records indicated a date prior to the date the claimant testified she saw him, this was a conflict for the hearing officer to resolve. Our review of the record does not reveal that the hearing officer's determination that the claimant did not have disability from the injury sustained on _____, is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the disability determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge