APPEAL NO. 000491

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 February 14, 2000. The issue at the CCH was whether the respondent (claimant) had disability from March 19, 1999, to the date of the hearing resulting from the injury sustained on _____. The hearing officer determined that the claimant had disability beginning on August 9, 1999, and continuing through the date of the hearing. The appellant (carrier) appeals, urging that the credible evidence does not support the hearing officer's determination of disability and asking that the decision be reversed and a decision rendered in its favor. The claimant responds that there is sufficient evidence to support the hearing officer's decision and asks that the decision be affirmed.

DECISION

Affirmed.

The claimant sustained a carpal tunnel syndrome (CTS) injury on _____, but continued working, although she used a wrist brace and medication periodically and had some pain and numbness. She testified that for a couple of weeks preceding October 17, 1999, she had to use a hand stapler and that it caused more pain in her wrists. She went to her doctor on October 17, 1999, and states she subsequently told her supervisor. Although the supervisor denied knowing the claimant went to a doctor and testified that he did not see indications that the claimant was hampered in her work, he reluctantly acknowledged that "I would be telling a story, but it seemed like she did, yes" when asked if the claimant complained about using the manual stapler and that it hurt her wrists; however, he denied that the claimant advised him surgery was being considered or recommended. In any event, the claimant was terminated on March 19, 1999, for reasons regarding a password. She states that her hand/wrist condition remained the same; that she did not have any insurance coverage; that she was advised that her husband's insurance, which did not become effective until June, would not cover her CTS because of the preexisting condition; that she applied for and received unemployment insurance; that she sent out resumes but was not offered a position that measured up to her qualifications; that she saw an orthopedic surgeon; that a nerve conduction study was completed on August 9, 1999; that she was taken off work as a result on August 9, 1999; and that she immediately informed the Texas Workforce Commission and benefits were stopped. She states she has not been released to work and that at the time of the CCH, surgery was in the approval stages. (In her response to the appeal, claimant states she had right CTS surgery on March 2, 2000.) Medical records in evidence corroborate that claimant underwent diagnostic tests and was taken off work on August 9, 1999.

The hearing officer determined that the claimant had disability from the compensable injury beginning on August 9, 1999, to the date of the CCH. It is apparent that he found the claimant's testimony to be credible and supported by the medical evidence regarding that date. Although the claimant urged that her disability should begin on the day she was

terminated, March 19, 1999, the hearing officer did not find the evidence to support disability until she was taken off work by her doctor on August 9, 1999, following diagnostic tests. In the meantime, she had been drawing unemployment compensation, and had sent out resumes. When she was taken off work by her doctor, she notified the authorities and her unemployment compensation was stopped. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer was responsible for resolving any conflict and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We have reviewed the evidence of record and cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order regarding disability from August 9, 1999, to the date of the hearing is affirmed.

Carrier also complains that part of the hearing officer's Finding of Fact No. 5 found that statutory maximum medical improvement (MMI) would be attained on August 13, 2001. Apparently, the hearing officer was merely reciting the statutory definition of MMI from Section 401.011(30)(B). However, we agree that MMI was not an issue at the CCH and was not advanced by either party and thus this language was mere surplusage and can be disregarded. The decision and order on disability is not affected and is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge