

## APPEAL NO. 000598

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 20, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; and whether she had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. She specifically found that claimant's hand condition did not result in the inability to work, as reflected in medical records. The claimant appeals, requesting that we reverse the hearing officer's decision and render a decision in her favor. She points out that she was taken off work by at least one doctor. The respondent (carrier) responds, reciting evidence in favor of the decision and urging affirmance.

### DECISION

We affirm the decision.

The claimant had been employed by (employer) as a bus driver for two years prior to her alleged injury of \_\_\_\_\_. She had been out of work for about nine months (December 1997 until September 1998, with a brief return in March) due to a shoulder and neck injury that occurred as she was pulling a steering wheel in 1997. The claimant contended that on November 4th, as she was once again pulling hard to turn the bus steering wheel, her right hand experienced a sharp pain and began swelling. She showed it to her supervisor but said there was not much concern on the part of supervisors. The claimant saw a doctor, but went back to work because she needed a paycheck. Thereafter, she was treated by Dr. G, but treatment stopped when the carrier denied liability for the claim. She said she was taken off work around December 1, 1998, by Dr. P. The claimant was terminated by the employer on December 31, 1998, for job abandonment.

The medical records show that claimant was treated by the company doctor for a wrist sprain on November 5, 1998, and returned to work that day with medication. An x-ray taken that day was reported as suspicious for vascular necrosis, and the suggestion of a bone scan was made. Dr. G noted on November 11th that a ganglion cyst should be ruled out, and diagnosed internal derangement of the right wrist. An MRI of November 24th was reported as showing two possible cysts and edema which could be post-traumatic or inflammatory in nature.

The claimant had physical therapy for three months beginning in December 1998. The claimant moved to her family home out of state in June 1999, and was then treated by Dr. B. Dr. B stated on July 12, 1999, that claimant was at maximum medical improvement (MMI); this letter has no diagnosis. While this letter and those subsequent refer to this as a work-related injury, the nature of the injury is not described. Claimant was referred to a hand specialist, who opined on November 2, 1999, that claimant had symptoms consistent with Kienbock's disease, an ordinary disease of life.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

Temporary income benefits are due when an injured worker has not reached MMI and had disability. Section 408.101(a). 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 wage." Without a finding of compensable injury, there can be no disability as defined by the 1989 Act.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the hearing officer's decision and order.

Susan M. Kelley  
Appeals Judge

CONCUR:

Thomas A. Knapp  
Appeals Judge

Alan C. Ernst  
Appeals Judge