

APPEAL NO. 000947

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 April 11, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury in the form of an occupational disease on \_\_\_\_\_; and that the claimant had disability from October 25, 1999, through December 20, 1999. The appellant/cross-respondent (carrier) appealed both the injury and disability determinations on sufficiency grounds. Claimant appealed the disability determination only, contending that disability did not end on December 20, 1999. Carrier also responded to the claimant's appeal, urging that if claimant had disability at all, it ended on December 20, 1999. The file does not contain a response from claimant to carrier's appeal.

DECISION

We affirm in part and reverse and remand in part.

Carrier contends that the determination that claimant sustained a compensable injury is against the great weight and preponderance of the evidence. Carrier asserts that claimant did not prove that her work activities caused her injury. Carrier contends that claimant did not do enough typing to cause a wrist injury and that there is no credible medical evidence that: (1) carpal tunnel syndrome (CTS) is caused by repetitive trauma; (2) claimant had CTS; or (3) that claimant had a work-related right upper extremity injury.

The applicable law and our standard of review are stated in Texas Workers' Compensation Commission Appeal No. 962516, decided January 22, 1997; Sections 401.011(26) and 401.011(34); Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991; Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994; Section 410.165(a); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer summarized and discussed the evidence in her decision and order. Briefly, claimant testified that she performed data entry work at a computer six to seven hours per day. Claimant was diagnosed with and treated for a repetitive use injury to her right upper extremity. Claimant's doctor took her off work from October 25, 1999, until December 20, 1999, when he returned her to part-time work. At the CCH, claimant said she had not been returned to full-time work. Claimant's attorney claimed during opening argument that claimant had disability beginning in October 1999 and that it has continued "since." The benefit review conference report also stated that claimant was alleging continuing disability.

The hearing officer assigned whatever weight she deemed appropriate to the evidence before her, including the medical evidence. She could have chosen to believe or disbelieve any part of the evidence before her. Carrier contended that the medical

evidence did not exclude other reasonable causes of claimant's upper extremity problems. However, a medical expert need not explain the precise biochemistry by which trauma affects the body. Western Casualty & Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975). The hearing officer was entitled to weigh the medical evidence and determine if claimant established causation in this case. She determined that claimant's work activities were a contributing factor regarding her injury and that claimant met her burden of proof regarding causation. After reviewing the record, we conclude that the hearing officer could find from the evidence that claimant met her burden regarding causation. Texas Workers' Compensation Commission Appeal No. 960596, decided May 8, 1996. We find that the hearing officer's determination regarding compensability is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. For this reason, we will not substitute our judgment for hers. Cain, *supra*.

Claimant contends the hearing officer erred in determining that the period of disability ended on December 20, 1999. Disability is defined in Section 401.011(16) to mean "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage."

The record reflects that claimant was released to part-time work only on December 20, 1999. There was nothing to indicate that, after that time, employer was paying claimant wages equivalent to her preinjury wage for part-time work. Where a medical release is conditional and not a return to full-duty status, disability from a compensable injury, by definition, has not ended unless the employee is able to obtain and retain employment at wages equivalent to his preinjury wage. Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. The hearing officer did not set forth fact findings regarding why disability ended on December 20, 1999. She stated that claimant was a credible witness and claimant testified to her continuing problems and limited work. The hearing officer did not state that the medical evidence regarding disability was not credible. Therefore, we must reverse these findings and the conclusion on disability and remand for further consideration and findings of fact regarding disability. No further hearing or evidence is necessary on remand.

Carrier also appealed the disability determination, apparently contending that: (1) claimant did not have disability because she did not have a compensable injury; and (2) if claimant did have disability, it ended on December 20, 1999, as found by the hearing officer. We have affirmed the injury determination, so we reject the general contention that claimant did not have disability at all. However, we have remanded the issue of the ending date of disability to the hearing officer for reconsideration.

We affirm that part of the hearing officer's decision that determines that claimant sustained a compensable injury. We reverse that part of the decision and order that determines that claimant's disability ended on December 20, 1999, and remand the disability issue for further proceedings consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge