

## APPEAL NO. 001191

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 April 23, 2000. The hearing officer determined that the compensable injury of \_\_\_\_\_, does not extend to appellant's (claimant) alleged bilateral carpal tunnel syndrome (CTS). The claimant appeals, asserting that the hearing officer failed to give sufficient weight to her credible testimony and medical records. The respondent (carrier) urges, in response, that the evidence is sufficient to support the hearing officer's determination.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, while employed as an aide at an assisted living center, she answered a resident's page; discovered the elderly resident on the floor with his walker and a chest of drawers on top of him; tried, unsuccessfully, to move the chest of drawers off the resident; and a short time later with the assistance of co-workers got the chest of drawers off the resident. She said that she hurt her hands, arms, shoulders, neck, and upper and lower back in this effort; that she first sought treatment from Dr. W on September 13, 1999, and complained of pain in her back and arms but not her hands; and that Dr. W would not treat a workers' compensation injury so she then sought and obtained treatment at a (clinic) from Dr. I.

The claimant indicated that the carrier accepted all of her injury except for the claimed bilateral CTS. She conceded having completed a pain drawing on \_\_\_\_\_, which showed pain in her shoulders, behind her shoulders, and in her mid-back area but which did not reflect any pain in her arms or wrists. The claimant also conceded that when she complained of pain in her arms at the clinic she did not specify her wrists and she indicated that her various diagnostic tests did not include a diagnostic test of her wrists. She also said she did not mention wrist pain when she told her two coworkers of her pain complaints.

The claimant further stated that she had previously had pain in her hands from lifting stacks of dishes; that tingling and numbness in her hands started after she began ultrasound therapy about a month after the injury; and that the pain in her wrists became worse at that time.

The employer's incident report of \_\_\_\_\_, states that the claimant's arms are sore and her back is hurting. Dr. W's notes of September 13, 1999, make no reference to the claimant's hands, wrists, or arms.

A partially illegible handwritten clinic record dated in November 1999 states that the claimant's "wrist was not part of the original injury." Dr. I's report of November 15, 1999, states the preliminary diagnosis as "[p]ersistent neck pain with occasional radiation to the

left upper extremity, more than the right, possibly secondary to cervical strain, rule out myofascial pain versus [CTS] versus radicular syndrome." Dr. I's report of December 23, 1999, states that the claimant's CTS is not a preexisting injury; that the trauma from lifting the dresser caused the injury; that "the mechanism of injury is secondary to a repetitive type injury that was brought on by lifting and hyperextending the wrist while attempting to lift a dresser off of a resident"; and that the claimant's CTS "is a direct result of the injury that occurred on \_\_\_\_\_."

In his November 15, 1999, report, Dr. M, a neurologist, who performed an EMG/NCV study of the upper extremities, states that "[t]here is electrical evidence to suggest a mild median neuropathy at both wrists, as can be seen in [CTS]." Dr. M further stated that "this is most likely an acute injury causing [CTS] or could also be related to a preexisting condition due to the type of work that the patient does."

In his initial orthopedic evaluation report of November 15, 1999, Dr. O states that the claimant noted pain in the neck, mid-back, and both shoulders, more severe on the left; that she noted no neurologic complaints in the upper extremities; and that his impression is neck strain, thoracic strain, and supraspinatus syndrome of both shoulders, more severe on the left.

Dr. G, who examined the claimant for the carrier, reported on January 11, 2000, that the claimant's diagnosis is pain in the neck and shoulders. Dr. S, the designated doctor, reported on February 21, 2000, that the claimant's diagnosis includes mild left shoulder impingement, regional musculoskeletal right shoulder pain, myofascial cervical and thoracic pain by history, and rhomboid spasms. Incidentally, Dr. S assigned an impairment rating (IR) of four percent while Dr. G's IR was "0%."

The hearing officer found that the compensable injury of \_\_\_\_\_, does not extend to the claimant's alleged bilateral CTS. In his discussion of the evidence, the hearing officer indicated his doubt, based on the medical records, that the claimant even has bilateral CTS.

The claimant had the burden to prove that she sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ); Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issue of injury can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts 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)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider the absence of complaints of hand or wrist pain in early medical records as well as the lack of definitive diagnostic testing and the various diagnoses which did not include CTS.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge