

APPEAL NO. 001210

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 March 28, 2000. The hearing officer determined that the appellant (claimant) did sustain a compensable soft tissue and tendinitis injury to the left upper extremity on _____; that the compensable injury does not extend to the cervical spine or left wrist carpal tunnel syndrome (CTS); and that the claimant's disability began on June 8, 1999, and continued through September 13, 1999. The claimant appeals, urging that the injury does extend to her cervical spine and CTS, and that she had disability from _____, through the date of the CCH. The appeals file does not contain a response from the respondent (carrier). The hearing officer's decision that the claimant sustained a compensable soft tissue injury and tendinitis injury to the left upper extremity on _____, has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant worked for the employer as a keyboard operator, taking phone calls and typing messages for 8 hours per day, 40 hours per week. In May 1999, the claimant developed numbness and tingling in her left upper extremity with pain from her fingers to her neck. On _____, the claimant was unable to type because of pain in her left upper extremity and she reported the injury to her employer.

The claimant sought medical treatment with Dr. R, a chiropractor, on June 7, 1999. Dr. R diagnosed cervical sprain/strain, cervical subluxation, CTS and rotator cuff sprain/strain. Dr. R took the claimant off work on June 7, 1999, and prescribed therapy. According to the claimant, she has been unable to work from June 7, 1999, through the date of the CCH.

On October 5, 1999, the claimant was examined by Dr. B at the request of the Texas Workers' Compensation Commission. Dr. B diagnosed tendinitis of the biceps muscle and referred the claimant for testing to rule out an atypical presentation of CTS. According to Dr. B, if no abnormalities were identified in the testing, then it was most likely the claimant's symptoms were from muscular ligamentous overuse of her left upper extremity and tendinitis in her left shoulder. On October 7, 1999, the claimant had a normal EMG and NCV.

Dr. R referred the claimant to Dr. A. On June 6, 1999, a needle EMG of the upper extremity was abnormal, showed left median nerve neuropathy, and findings consistent with CTS. Dr. A's records indicate that the claimant has a positive Tinel's sign and continues to suffer symptoms consistent with CTS and shoulder impingement. According to the claimant, Dr. A has recommended surgery for left CTS.

The claimant had the burden to prove the extent of her compensable injury. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. The hearing officer was presented with conflicting evidence concerning whether the claimant had a cervical spine injury and CTS. The hearing officer found the opinion of Dr. B more persuasive than that of Drs. R and A. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the claimant's injury sustained on _____, does not extend to or include an injury to the cervical spine and left wrist CTS.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The existence of disability is a question of fact for the hearing officer. The claimant testified that she has been unable to work since June 8, 1999, and presented off-work slips from Dr. R indicating that she was unable to work through September 13, 1999. Although the claimant's testimony alone could establish disability, the hearing officer did not find the claimant's testimony persuasive concerning continuing disability. After considering all of the evidence, the hearing officer resolved that the claimant had disability beginning on June 8, 1999, and continuing through September 13, 1999. We find there was sufficient evidence to support the hearing officer's determination of disability.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge