

APPEAL NO. 001346

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 May 18, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, bilateral medial and lateral epicondylitis and bilateral carpal tunnel syndrome (CTS); and that the claimant had disability as a result of her compensable injury from December 15, 1999, to January 3, 2000. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant is an 18-year employee of the employer, an air conditioner manufacturer. It is undisputed that she sustained a prior compensable injury with a date of injury of _____. Her complaints in the _____ compensable injury concerned a ganglion cyst on her right wrist and left elbow problems. The claimant contends that she sustained a new repetitive trauma injury, bilateral CTS, with a date of injury of _____; however, the carrier contends that she is experiencing a recurrence of symptoms from her _____ compensable injury.

The claimant testified that on _____, she was working on an assembly line; that her duties required her to align a coil with holes in a panel; and that the coils would not line up correctly with the holes so she had to hit the coils with her hand to get them to go into place. She testified that the next morning, _____, she woke up and her hands and arms were numb and she could barely move them.

On October 26, 1999, the claimant had an appointment with Dr. C, with whom she also treated for her 1998 compensable injury. In his report from that date, Dr. C diagnosed bilateral elbow medial and lateral epicondylitis, bilateral CTS, and a right wrist ganglion cyst. As the carrier notes, the date of injury listed on the October 26th report is _____. On November 3, 1999, the claimant underwent EMG/NCV testing of her upper extremities, which confirmed moderate right CTS, mild to moderate left CTS, and bilateral medial and lateral epicondylitis. On December 15, 1999, the claimant underwent right carpal tunnel release surgery. The claimant returned to work on January 4, 2000, in a light-duty position with the employer. She testified, and Dr. C's records confirm, that left carpal tunnel release surgery has been recommended and that there has been a delay in scheduling the surgery because the claim was disputed.

In reports dated February 4, 2000, and March 30, 2000, respectively, Dr. C opined that the claimant sustained a new compensable injury in September 1999 as opposed to continuing to suffer the effects of her prior compensable injury. Dr. L, who is apparently the plant doctor for the employer and served as the claimant's treating doctor for her 1998 injury, reviewed the claimant's medical records at the request of the carrier in order to

determine if the claimant sustained a new compensable injury. In a January 4, 2000, report, Dr. L stated:

Based upon the available information and given the existence of right and left wrist/hand complaints dating back to _____ (including numbness in the left palm) related to repetitive gripping, it is my opinion that her recent complaints represent an exacerbation of the injury of this same date (_____).

In an addendum to his report dated February 15, 2000, Dr. L explained that he used the term exacerbation "to imply a continuation or flare of the previous injury of _____."

The carrier contends that the hearing officer's determination that the claimant sustained a new compensable injury is against the great weight of the evidence. The claimant had the burden to prove that she sustained a new injury as opposed to having a continuation of symptoms related to her prior compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. 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 manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight, emphasizing the evidence it believes shows that the claimant's symptoms are related to her _____ compensable injury. The carrier also emphasized those factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant sustained a new injury is supported by sufficient evidence, namely the claimant's testimony and the evidence from Dr. C, which he was free to credit over the evidence from Dr. L that the claimant did not sustain a new injury. Our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The carrier's challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of that determination, we likewise affirm the determination that the claimant had disability as a result of her compensable injury from December 15, 1999, to January 3, 2000.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge