

APPEAL NO. 001349

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 May 8, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to bilateral carpal tunnel syndrome (CTS) and that the claimant reached maximum medical improvement (MMI) on June 1, 1999, with an impairment rating (IR) of one percent. The hearing officer also determined that it was not reasonable or necessary to appoint a second designated doctor to evaluate the claimant. The claimant appealed the finding that her compensable injury of _____, does not extend to bilateral CTS on the grounds of sufficiency of the evidence and requested the Texas Workers' Compensation Commission (Commission) to reverse the hearing officer's determination that she reached MMI on June 1, 1999, with an IR of one percent. The claimant requested the Commission to appoint a second designated doctor because the doctor appointed by the Commission was unable to continue serving in his capacity as designated doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and rendered that the compensable injury of _____, extended to bilateral CTS and reversed and remanded as to the issues of MMI, IR, and appointment of a second designated doctor.

The claimant worked as a data entry and insurance clerk for the employer which required typing from 8 to 10 hours a day at a computer terminal. Her date of hire was July 29, 1996. The claimant testified that prior to December 1998, she had been treating with Dr. W at (clinic) for migraine headaches. On December 15, 1998, the claimant mentioned to Dr. W that she was having problems with her hands going numb at home and having pain at work. After an examination Dr. W determined that she possibly had bilateral CTS. The claimant testified that Dr. W wanted to confirm the diagnosis with further testing.

Nerve conduction studies were performed and a progress note dated December 21, 1998, from Dr. W indicates that the claimant did show evidence of moderate bilateral CTS, worse on the right as compared to the left. The claimant was instructed to use wrist splints and was referred to Dr. H, a neurosurgeon, for consideration of surgery to release the carpal tunnel. Medical records dated January 4, 1999, from Dr. H reflect that he concurred in the diagnosis of bilateral CTS and suggested conservative care before attempting surgery. The claimant agreed to his suggestion. The claimant returned to Dr. H on February 4, 1999, stating she was having significant difficulty with her hands and that she wanted the surgery. A right carpal tunnel release was scheduled for February 9, 1999. The claimant stated that on February 8, 1999, the day before her surgery, she was terminated from her employment.

The claimant testified that she worked for another employer part time on an “as needed” basis registering patients at (employer 2) during her employment with the employer. She continued working for employer 2 after her termination, and, within a couple of months, started working full time as a receptionist at employer 2. The claimant testified her work consisted of answering telephones and opening doors, but very little typing.

The claimant testified that after her termination from her employer she could no longer use Dr. W and Dr. H as she had been using her personal group health insurance which expired upon termination. The claimant testified that the employer filed under workers’ compensation for her and submitted the date of injury as _____. A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed by the carrier at a later date reflects that it received notice of a bilateral CTS injury on February 11, 1999. At the CCH, the parties stipulated the claimant sustained a compensable bilateral wrist overuse syndrome injury while in the course and scope of employment with the employer on _____.

The claimant sought further medical treatment for her hands and wrists, pursuant to a workers’ compensation claim, and saw Dr. R, who also worked at the clinic, for the first time on February 19, 1999, as her initial choice of treating doctor. The claimant testified that she told Dr. R about her prior diagnosis of bilateral CTS and possible need for surgery, but he suggested conservative therapy. The initial narrative produced by Dr. R on February 19, 1999, reflects the claimant presented upon referral with a working diagnosis of bilateral CTS. Dr. R, after performing an examination, entered a diagnosis of “bilateral wrist pain secondary to an overuse syndrome, doubt significant median neuropathy” on the progress note. Dr. R noted he did not have the prior electrodiagnostic studies, but would obtain them along with the records from Dr. W and Dr. H. He continued the use of wrist splints and advised the claimant to rearrange her workstation so it would be ergonomically correct.

The claimant returned to Dr. R for treatment on March 5, 1999, who noted some improvement in the claimant’s symptoms but also added the diagnosis of mild de Quervain’s tenosynovitis on the right with mild extensor tendinitis. Dr. R wrote that “based on her history of multiple problems which seem to be overuse related, I will go ahead and place her in a brief course of occupational therapy. . . .” By April 5, 1999, Dr. R discontinued the claimant’s therapy as it appeared her condition was regressing, but he agreed to reevaluate upon receipt of the therapist’s report. Dr. R noted the claimant had some new symptoms and entered an amended diagnosis of bilateral overuse syndrome with mild triceps myalgias of unclear etiology.

A progress note from Dr. R dated April 19, 1999, reflects that the claimant was discharged from therapy and was feeling better. He wrote that the overuse syndrome and de Quervain’s tenosynovitis were essentially resolved. A subsequent report dated May 12, 1999, reflects the claimant as having continuing difficulties which had progressed to include mild impingement in her upper back with trapezius discomfort. Dr. R cautioned the

claimant that wearing the wrist splints could be causing compensatory changes in her shoulders and elbows. On the May 24, 1999, progress note, Dr. R indicated that the claimant's condition had improved but she continued to have discomfort seemingly from increased activity.

On June 7, 1999, Dr. R certified the claimant to have reached MMI on June 1, 1999, with an IR of one percent. Dr. R used a diagnosis code for CTS on the Report of Medical Evaluation (TWCC-69). The narrative attached to the TWCC-69 from Dr. R contains a finding that "she quit working at (the employer) [sic] which apparently was where most of the repetitive hand-intensive work occurred. . . . [T]here was a clear work-related component driving the overuse. . . ." Dr. R wrote that nerve entrapment findings remained negative per clinical observation throughout her course of treatment but acknowledged that electrodiagnostic studies suggested the claimant had mild bilateral median neuropathy. Dr. R's IR included an impairment for abnormal range of motion in the claimant's wrists and elbows but he declined to address the mild median neuropathy apparent on the electrodiagnostic studies. He wrote that the "work comp case apparently was recognized as of _____ so the bilateral median neuropathy would be related, but probably a pre-existing condition." He stated he would be happy to revise his report to include the neuropathy if requested to do so by the carrier or the employer.

The claimant testified that she disputed Dr. R's report and filed a request to change treating doctors because she was still having problems which Dr. R failed to address and treat. The Commission subsequently approved her request to change her treating doctor to Dr. M and appointed Dr. L as the designated doctor. The claimant testified she wanted Dr. M to take over her care because she had used his services for other medical needs; that he had been unable to accept her as a workers' compensation patient the first time she saw him for other medical conditions.

The claimant was examined by Dr. L on August 24, 1999, who, by report of the same date, certified that the claimant had reached MMI on June 1, 1999, with a one percent IR. Dr. L recounted the claimant's medical history. The narrative indicated that Dr. L did not have any imaging or electrodiagnostic studies to review. Based upon his clinical examination, Dr. L diagnosed the claimant with mild bilateral de Quervain's tenosynovitis and diffuse neuritis of bilateral upper extremities without evidence of focal compressive neuropathy. Dr. L declined to assess an IR for neurological deficits.

After being rated by Dr. L, the claimant began working part time for the clinic as a secretary. The claimant testified the clinic made accommodations for her CTS and she was not required to do much typing. The claimant was subsequently examined by Dr. M on November 1, 1999, who diagnosed bilateral CTS along with some other degenerative conditions and ordered additional nerve conduction studies. The studies were conducted on November 30, 1999, and they confirmed the diagnosis of bilateral CTS.

By letter dated January 11, 2000, Dr. M indicated that he agreed with the diagnosis of Dr. R and Dr. L, but believed the overuse was the causative factor of the claimant's ongoing focal median neuropathy at her wrists and her CTS had not been adequately addressed. Dr. M opined that surgery was necessary to correct the condition; that the claimant had not reached MMI; and that the IRs assessed by Dr. R and Dr. L were inappropriate because of the failure to include the median neuropathies.

The claimant offered evidence that the Commission attempted to contact Dr. L to advise him of the additional electrodiagnostic studies and Dr. M's report, but a letter dated January 25, 2000, to a benefit review officer from Dr. L's office coordinator reflects that she had received correspondence from the Commission, but Dr. L was no longer available to respond to the inquiry. Dr. L's office coordinator wrote that Dr. L was no longer in the State of Texas and had relocated.

At the hearing, the claimant contended that she always had bilateral CTS and was scheduled for surgery prior to being terminated; that she should be able to have the surgery; and that her IR should include a rating for a neurological deficit. The claimant requested the Commission appoint a second designated doctor who could respond to the letter of clarification and additional electrodiagnostic studies. The carrier argued at the hearing that the designated doctor properly rated the claimant and the need for surgery arose because of her subsequent employment, not because of her activities while working for the employer.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel, an appellate reviewing tribunal, 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. 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 1989 Act defines injury to mean, in pertinent part, "damage or harm to the physical structure of the body." Section 401.011(26). We conclude that the hearing officer's findings that the claimant did not suffer damage or harm to the physical structure of her body in the form of bilateral CTS on _____, and that she failed to establish a causal connection between the CTS and her employment are against the great weight of the evidence. The parties stipulated the claimant sustained a compensable bilateral wrist overuse syndrome injury while in the course and scope of employment with the employer on _____. The claimant was clearly diagnosed by both Dr. W and Dr. H with bilateral CTS; had an EMG and nerve conduction studies which confirmed the diagnosis; and was scheduled for a carpal tunnel release prior to her termination on February 8, 1999. All of the doctors except Dr. P, via a peer review report, attributed her hand and wrist difficulties to her employment activities with the employer. Accordingly, we reverse the hearing

officer's findings regarding the CTS as not being supported by the evidence and render a new decision that the compensable injury of _____, extends to bilateral CTS.

An IR is "the percentage of permanent impairment of the whole body resulting from a compensable injury." Section 401.011(24). "Impairment" is defined as "any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). By definition, an IR can only be assigned for impairment that results from the compensable injury. In this case, the designated doctor did not assign an impairment for the bilateral CTS, which we have rendered part of the compensable injury of _____, and he is unavailable to answer a letter of clarification or to reexamine the claimant.

Where there are sufficient questions concerning whether or not a designated doctor has properly followed the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, we have remanded to allow the hearing officer to seek clarification from the designated doctor. Texas Workers' Compensation Commission Appeal No. 93600, decided August 31, 1993. A new designated doctor should not be appointed until the designated doctor has had an opportunity to clarify. If a designated doctor cannot or refuses to comply with the requirements of the 1989 Act, a second designated doctor should be appointed. Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993.

An abuse of discretion occurs when a decision is made without reference to any guiding rules or principles. See *Morrow v. H.E.B. Inc.*, 714 S.W.2d 297 (Tex. 1986); see also Texas Workers' Compensation Commission Appeal No. 931034, decided December 27, 1993. Given that a reevaluation is warranted because the entire compensable injury has not been evaluated by Dr. L and that Dr. L is unavailable to respond to a letter of clarification, we find that the hearing officer erred in determining that the Commission did not abuse its discretion when it refused to appoint a second designated doctor. Accordingly, we reverse the determinations of the hearing officer that the claimant reached MMI on June 1, 1999, with an IR of one percent and remand this case to the hearing officer for appointment of a second designated doctor who shall examine the claimant. We direct the hearing officer to forward the additional electrodiagnostic studies and Dr. M's report of January 11, 2000, for his consideration in determining when the claimant reached MMI and the IR.

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 Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge