

APPEAL NO. 001415

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 22, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease (right carpal tunnel syndrome (CTS)) on _____,¹ and that the claimant had disability from July 30, 1999, through the date of the CCH. The appellant (carrier) appealed the compensability determination, contending that it was against the great weight and preponderance of the evidence. It also appealed the disability determination, based on lack of a compensable injury and raising an issue of the amount of temporary income benefits (TIBs) otherwise owed the claimant. The claimant replied that the compensability and disability determinations were correct and should be affirmed but conceded that she was not entitled to the "full rate" of TIBs.

DECISION

Affirmed.

The claimant worked for five and one-half years full time as a receiving clerk. Her duties involved unloading freight and tracking merchandise received by visual inspection and computer data entries. On _____, she said, she felt a pop in her neck while at home in bed and developed right shoulder, arm, and neck pain. On April 28, 1999, her hours were cut from eight to four hours per day because of this condition and she continued to work four hours per day through the date of the CCH and actually received a \$0.50 per hour raise in October 1999. She expressly stated that she was only claiming a right CTS compensable injury. She testified that she was informed by Dr. P on _____, that she had right CTS and that it was related to her repetitive job activities. There was agreement by the parties that the date of the claimed right CTS injury was _____.

Dr. B performed a required medical examination of the claimant on March 8, 2000, specifically to address whether the right CTS was the result of her work. He concluded that it was caused by work-related repetitive hand activity. On January 20, 2000, Dr. P also concluded that the right CTS was "a work aggravated, if not work caused, injury."

The hearing officer found the claimant and Dr. P and Dr. B persuasive and credible in their position that the claimant's work activities caused her right CTS. The carrier argues in its appeal that the right CTS was part of the package of symptoms experienced by the claimant in March 1999 and that the right CTS was caused by the non-compensable neck condition. The cause of the right CTS was a question of fact for the hearing officer to decide. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence

¹The date of injury was not an express issue.

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). Applying this standard of review to the record of this case, we find the claimant's testimony and the opinions of Dr. B and Dr. P, deemed credible by the hearing officer, sufficient to support the determination that the claimant's right CTS is a compensable injury.

The hearing officer also found disability from July 30, 1999, through the date of the CCH. The carrier appeals the finding of disability to the extent it argues there was no compensable injury and objects to being ordered to pay "full" TIBs, rather than receiving credit for the four hours per day that the claimant continued to work after her right CTS injury. The claimant in her response appears to agree with the carrier that she should not receive TIBs in addition to her salary for her actual hours worked after the injury.

We stress that we do not address the correctness of the disability determination beyond the question of whether there was a compensable injury (which determination we have affirmed) because it was not appealed on any other basis. This should not be construed as our endorsement of this determination. In addition, we note that the amount of TIBs owed the claimant was not an issue at the CCH and that the parties appear to agree in the main TIBs contention in the carrier's appeal. Under these circumstances, if the parties are, in fact, in disagreement over the amount of TIBs owed, they can initiate the dispute resolution system to expressly address the issue of TIBs should that become necessary.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge