

APPEAL NO. 001581

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 June 15, 2000. The hearing officer determined that the compensable injury sustained on _____, does extend to include an injury to the left shoulder, left biceps, and left wrist and that the respondent (claimant) did have disability from January 28, 2000, through the present. There was no issue over whether a bona fide job offer had been made.

The appellant (carrier) appealed the disability determination, essentially arguing that an inability to work does not result from injury to one extremity. The carrier argues that because the claimant's light-duty job is available, he does not have disability. The claimant responded with facts that support the hearing officer's decision. There is no appeal of the injury finding.

DECISION

We affirm the hearing officer's decision.

The hearing officer has thoroughly described the pertinent evidence and we will incorporate that decision here, only briefly summarizing. The claimant caught his left hand in a compression molding machine on _____. He pulled his hand out of the machine and sustained a severe laceration which needed surgery. Thereafter, the claimant suffered shooting pains from his shoulder which eventually resulted in lost time from work. The claimant's position was that this related to a pulling of his arm by the machine "with a whole body motion" and the carrier disputed the likelihood that this was so. The claimant performed some light-duty work for the employer but experienced pain and was eventually taken off work. The claimant said he stopped working due to his pain and doctor's orders. The hearing officer believed the testimony and evidence in support of the injury and period of disability beginning January 28, 2000, when the claimant first missed work, through the date of the CCH.

The claimant was recommended for further evaluation of his shoulder by both his treating doctor and the required medical examination doctor, Dr. H. Dr. H diagnosed shoulder and elbow sprain and found that claimant had not yet reached maximum medical improvement as of June 1, 2000. He noted that in mid-November 1999 the claimant's treating doctor had recommended an MRI of the left shoulder due to persistent problems.

Mr. H, the employer's safety manager, said that the claimant's light-duty job involved sorting plastic parts and would still be available.

Although the carrier argues that the treating doctor must supply evidence that the claimant cannot perform even modified-duty work, we do not agree and, in any case, evidence of ability to work on a modified basis could still be considered evidence of the continuation of disability. As noted, there was no issue concerning credit for offered wages

pursuant to Section 408.103(e). We have reviewed the record and find that the decision of the hearing officer is supported and is not against the great weight and preponderance of the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

All of the matters argued by the carrier were among those factors that had to be evaluated and weighed. We find that the decision on disability is sufficiently supported by the record. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here and affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge