

APPEAL NO. 001796

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 June 14, 2000. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes right carpal tunnel syndrome (CTS); and that the claimant had disability as a result of the compensable injury from December 8, 1998, to September 7, 1999. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable cervical injury on _____, in the course and scope of his employment with (employer). The claimant testified that he injured his neck and right hand/wrist on _____ performing frequent and heavy lifting of boxes containing office supplies and equipment. The claimant sought medical care on February 11, 1998, at the clinic where he was referred by the employer, and the Initial Medical Report (TWCC-61) from that visit reflects complaints of right hand pain and numbness in addition to the complaints of neck and shoulder pain. References to complaints of pain and numbness in the right hand and fingers continued in the claimant's medical records. On September 3, 1998, Dr. F performed EMG/nerve conduction testing on the claimant, which confirmed right CTS. Dr. F noted that a right carpal tunnel release would be appropriate if conservative measures failed. Conservative measures were not successful in alleviating the claimant's pain; thus, he was referred to Dr. N for a surgical consultation. In a June 8, 1999, report, Dr. N confirmed the diagnosis of right CTS and stated that "[h]istorically there is correlation with his job activities and the onset of these symptoms." On June 18, 1999, Dr. N performed right carpal tunnel release surgery. With respect to the issue of disability, the claimant's medical records reflect that he was placed on light duty shortly after his injury and that he continued in that status until September 7, 1999, when Dr. N released him to regular duty following the carpal tunnel release surgery.

In arguing that the claimant's compensable injury did not include the right CTS and that the claimant did not have disability as a result of his compensable injury, the carrier relies primarily on the claimant's voluminous medical records from the Veteran's Affairs hospital. Those records reflect that the claimant has numerous health problems that date from his injury during his service in Vietnam. Specifically, those records state that the claimant had complaints of right hand pain prior to his compensable injury and that he has been diagnosed with lung cancer, emphysema, and chronic obstructive pulmonary disease. The carrier contends that these serious medical conditions are the cause of the claimant's inability to work and not his compensable injury.

The claimant had the burden to prove that his compensable injury included his right CTS. 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 of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of his claim. The carrier emphasized the same 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's compensable injury included his right CTS is supported by sufficient evidence and our review of the record does not demonstrate that the extent-of-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 it on appeal. Pool; Cain.

The carrier also asserts error in the hearing officer's determination that the claimant had disability from December 8, 1998, to September 7, 1999. The carrier maintains that the claimant's other serious health problems are the cause of his disability. It is well-established that the claimant need only demonstrate that his compensable injury is a cause of his inability to obtain and retain employment at his preinjury wage in order to sustain his burden of proving disability. In this instance, the medical records reflect that the claimant was on light-duty status for the period of disability found by the hearing officer. In addition, the claimant testified that he was not able to work because of his compensable injury. That evidence provides sufficient support for the hearing officer's disability determination and nothing in our review of the record reveals that the hearing officer's disability determination is so against the great weight of the evidence as to compel its reversal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge