

APPEAL NO. 001918

Following a contested case hearing held on July 19, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the date of injury is _____; and that the claimant had disability from October 17, 1999, through the date of the hearing. The appellant (carrier) has appealed these determinations, asserting that the claimant's bilateral carpal tunnel syndrome (CTS) resulted from his prior workers' compensation injury, a motor vehicle accident (MVA) on _____, from which he sustained not only the low back and neck injuries which the carrier for those injuries accepted, but also the CTS for which he has filed the claim against the carrier. The claimant urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed in part; reversed and rendered in part.

The claimant testified that he had worked for the employer and its predecessor in interest approximately 20 years when Dr. W took him off work altogether in October 1999 because of his CTS injury and that he has not since returned to work. He stated that after his work-related MVA in _____, he was returned to work at light duty in April 1999; that he worked in a training capacity for approximately one and one-half months; and that he then returned to his usual service technician duties servicing commercial clothes washers and driers at apartment complexes. The claimant described these duties as involving the frequent, repetitious use of his upper extremities in lifting the appliances during installation and maintenance; replacing motors, belts, hoses, and brake pads; repairing and replacing valves; and replacing coin slot mechanisms.

The claimant further testified that sometime after the MVA, he began to experience some tingling and numbness in his hands and some curling of two right-hand fingers. He said he thought these symptoms were caused by the MVA until _____, when Dr. W discussed the nature of his job duties and advised him that his CTS was related to these repetitious duties. He indicated that no other doctor had discussed this matter with him prior to _____.

Mr. F, a claims representative for (carrier 2), the carrier who covered the claim arising from the MVA, testified that carrier 2 accepted a low back injury and later a cervical injury. He said that carrier 2 continued to deny coverage for the CTS because the claimant never produced medical opinion at the benefit review conferences to the effect that the CTS was caused by the MVA.

Dr. RB reported on November 20, 1998, that nerve conduction studies of the upper extremities suggested a mild bilateral CTS, greater on the left. Dr. W reported on _____, that the claimant "had no clue about the extent or nature of his injuries until [Dr. W] informed him 2-3-00" that "the onset of neck and back pain can be traced to the MVA but [claimant] attributes the progressive precipitation and aggravation (over the course of the next 5 months) to strenuous washers & dryers installation and repair"; that both of the claimant's hands and wrists withstood abnormal compressive forces during frequent, repetitive, awkward mechanical handling tasks; and that the CTS "evolved after 6-8-98 and is not related to the MVA."

In addition to the dispositive conclusions of law, the carrier challenges the factual findings that _____, was the day the claimant first knew or should have known that his hand pain may have been related to his employment (see Section 408.007); that the claimant injured his hands (bilateral CTS) as a result of the repair and installation work he performed on his employers' washers and driers; and that the claimant "had disability from the injuries sustained on or about _____, and disability is from October 17, 1999, through the date of this hearing, July 19, 2000."

The claimant had the burden to prove that he sustained the claimed injury, the date of that injury, and that he had disability as that term is defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. The same can also be said for establishing the date of injury. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel 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 and, except for the commencement date of the period of disability, we do not find them so in this case and they are affirmed. 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 hearing officer could credit the evidence that the claimant did not realize his CTS was attributable to the repetitive nature of his work until so informed by Dr. W on _____.

In his discussion of the disability issue, the hearing officer merely states as follows: "Regarding disability, medical documents sufficiently support the Claimant's position that he sustained disability from October 17, 1999, to the date of this hearing. The Claimant's last day of work was October 16, 1999."

Disability means "the inability **because of a compensable injury** to obtain and retain employment at wages equivalent to the preinjury wage. [Emphasis supplied]" Section 401.011(16). It is self-evident that an injured employee cannot have disability which predates the compensable injury.

Because the evidence supports a determination that the claimant had disability from the date of the injury to the date of the hearing, we reverse the disability determination and render a new decision that the claimant had disability from _____, through the date of the hearing. The hearing officer's determinations of the occupational disease injury and the date of the injury are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge