

## APPEAL NO. 002225

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 August 29, 2000. The hearing officer determined that: (1) the compensable injury of the appellant (claimant) did not extend to a right or left carpal tunnel syndrome (CTS) injury; and (2) claimant is not entitled to supplemental income benefits (SIBs) for the first and second quarters. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that her compensable injury did not include bilateral CTS. Claimant asserts that the hearing officer did not look at certain evidence. It is undisputed that claimant sustained a compensable injury on \_\_\_\_\_. Claimant said she slipped on a wet floor, that she fell hitting her hand and shoulder on a table, and that she then fell to the floor. Claimant said she injured various parts of her body in the fall, including her wrists, and said her CTS was caused by the fall.<sup>1</sup> In a February 8, 1999, report, Dr. R stated that claimant's CTS is related to her compensable injury. However, in a March 2000, report, Dr. R said a causal relation was "unlikely" and that the "more likely thing is that the patient's [CTS] developed solely while working as a chef [for a seven-year period.]" Dr. J related the CTS diagnosis to claimant's fall in \_\_\_\_\_. Dr. L stated that the medical findings were inconsistent, that CTS is not indicated, and that CTS surgery was not "reasonable as related to the original injury."

The applicable law and our appellate standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001909, decided September 27, 2000. In this case, the hearing officer determined that claimant did not meet her burden of proof regarding scope of the injury. This issue involved a fact question for the hearing officer, which he resolved. The hearing officer could decide to believe all, none, or any part of the evidence. Appeal No. 001909. He decided what weight to give to the evidence, including the medical evidence. After reviewing the record, we conclude that the hearing officer's determination is not 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).

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs for the first quarter. The criteria for entitlement to SIBs are set forth in Sections 408.142(a) and 408.143. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying period is discussed in Texas Workers'

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<sup>1</sup>However, claimant also said her CTS was caused by the cane she used after her injury and also by her repetitive work for employer.

Compensation Commission Appeal No. 000004, decided February 15, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an employee may be in good faith if the employee: (1) has been unable to perform any type of work in any capacity, (2) has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and (3) no other records show that the injured employee is able to return to work. The Appeals Panel's standard of appellate review is also discussed in Appeal No. 000004.

The parties stipulated that: (1) claimant sustained a compensable injury on \_\_\_\_\_; (2) claimant had an impairment rating equal to or greater than 15%; (3) claimant did not commute any of her impairment income benefits; and (4) the qualifying period for the first quarter ran from July 6, 1999, through October 3, 1999. Claimant asserted that she had no ability to work during the qualifying period and, alternatively, that she called trying to find work every day during July, August, and September 1999. The hearing officer stated that he did not find that testimony to be credible.

The hearing officer was the sole judge of the credibility of the evidence and he judged the credibility of the medical evidence regarding whether claimant had an ability to work during the qualifying period. The hearing officer determined that claimant did not meet her burden to show she had no ability to work. There was evidence from Dr. R that claimant had no ability to work from July to October 1999, but the hearing officer specifically determined that this evidence was not convincing. He also noted that two other doctors explained that claimant had an ability to work. He determined that claimant had some ability to work and that she did not document a job search effort regarding the first quarter qualifying period. It appears that the hearing officer determined both that claimant's narrative report was inadequate and that other records showed that she had an ability to work during the qualifying period. Because the hearing officer believed that claimant was able to do some work and that claimant did not look for work every week of the qualifying period, the hearing officer did not err in determining that claimant did not meet her burden of proof regarding the good faith SIBs criterion. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we will not substitute our judgment for his. Cain, *supra*.

Claimant contends the hearing officer erred in determining that she is not entitled to SIBs for the second quarter. The parties stipulated that the qualifying period for the second quarter ran from October 5, 1999, through January 3, 2000. Claimant did not make a job search during the qualifying period for that quarter and asserts that she had no ability to work. The hearing officer determined that claimant failed to prove that she had no ability to work during the second quarter qualifying period. Because the hearing officer believed that claimant was able to do some work and that claimant did not look for work every week of the qualifying period for the second quarter, the hearing officer did not err in determining that claimant did not meet her burden of proof regarding good faith. The hearing officer's determinations in this regard are not so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust and we will not substitute our judgment for his. Cain, *supra*.

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge