

## APPEAL NO. 002591

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was originally held on July 19, 2000. In his first decision and order the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that the injury included the left elbow, left shoulder, cervical area and thoracic outlet syndrome. The hearing officer also found that the claimant had disability from November 3, 1999, to the date of the hearing on July 19, 2000.

The appellant (carrier) appealed and in Texas Workers' Compensation Commission Appeal No. 001943, decided October 3, 2000, the Appeals Panel reversed the finding that the compensable injury extended to the left elbow and remanded the case for the hearing officer to reconsider the evidence in the record and render findings of fact and conclusions of law according to Appeal No. 001943 on the question of whether the claimant's compensable injury extended to the left elbow. Since the condition of the elbow impacted on the claimant's ability to earn wages, the Appeals Panel also remanded the issue of disability.

A hearing on remand was held on October 16, 2000. The hearing officer did not allow the parties to offer any additional evidence. Upon remand, the hearing officer determined that the claimant's compensable injury extended to and included an injury to his left elbow and that the claimant had disability from November 3, 1999, to the date of the CCH on October 16, 2000. The carrier appealed the adverse determinations on the grounds of sufficiency of the evidence. The carrier additionally urged that there was no evidence to support a finding of disability from July 20, 2000, through the date of the second CCH on October 16, 2000, as no additional evidence was taken at the second CCH. The appeals file does not contain a response from the claimant.

### DECISION

Affirmed in part; reversed and rendered in part.

At the original hearing the parties offered conflicting evidence as to whether the claimant had sustained a compensable injury to his left elbow. The hearing officer determined on remand, after reconsidering the evidence from the original hearing including the report of Dr. D, that the claimant's compensable injury extended to the left elbow. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so

against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Since we find the evidence sufficient to support the determination of the hearing officer that the compensable injury extended to the left elbow, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The hearing officer concluded that the claimant had disability from November 3, 1999, through the date of the second CCH on October 16, 2000. The carrier asserted that the hearing officer erred in finding that the claimant had disability through this date, contending that the claimant's disability ended on November 22, 1999, or, at the latest, on March 22, 2000, when the claimant underwent surgery on his left elbow. The carrier also pointed out that there was no evidence to support a finding of disability from the day after the first CCH on July 19, 2000, to the date of the second CCH since the hearing officer did not allow the parties to present additional evidence.

After review of the record we find the evidence sufficient to support a finding that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from November 3, 1999, through the date of the first CCH on July 19, 2000. However, the hearing officer erred in finding disability from July 20, 2000, to the date of the second CCH on October 16, 2000, as there was no evidence taken at the second CCH concerning disability during this period of time. We reverse the finding of disability from November 3, 1999, through October 16, 2000, and render a decision that the claimant had disability from November 3, 1999, through July 19, 2000.

We affirm the hearing officer's decision and order that the claimant's compensable injury extended to the left elbow and reverse and render a decision that the claimant had disability from November 3, 1999, through July 19, 2000.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge