

APPEAL NO. 010999
FILED JUNE 20, 2001

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 March 22, 2001. The hearing officer determined that: (1) respondent (claimant) sustained a compensable injury to her left upper extremity on _____; (2) claimant had disability from March 24, 2000, through the date of the hearing; (3) claimant has not yet reached maximum medical improvement (MMI); and (4) appellant (carrier) waived the right to contest the compensability of the claim. Carrier appealed these determinations on sufficiency grounds. Carrier also appealed the determination regarding waiver and asserted that it need not have contested the claim because claimant has no damage or harm to the physical structure of her left upper extremity. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant sustained a compensable injury. Carrier asserts that claimant did not prove causation, that her symptoms occurred at home, and that claimant experienced pain only, which is not an injury. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. Claimant's EMG test results, claimant's testimony, and the August 29, 2000, report from Dr. FR support the hearing officer's determinations. We conclude that the hearing officer's determinations are 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).

Carrier contends the hearing officer erred in determining that claimant had disability from March 24, 2000, through the date of the hearing. Carrier asserts that claimant was released to full-duty work by Dr. F and that she performed full-duty work for (employer 2) in July and August 2000. Claimant testified that, at the time of her injury, she was doing part-time work for employer 1 and that she was told that the part-time job would be about 30 hours per week. She said she started at \$6.50 per hour and that she also received payment for mileage. Claimant said the hours varied, that she had only worked for 2 days at the time of her injury; that she worked 10 hours March 20, 2000; and that she worked a 14-hour day on _____. The hearing officer determined that at the time of her injury on _____, claimant was making about \$6.75 per hour and that there was an expectation that she would be doing considerable overtime work. The hearing officer also determined that after claimant stopped working for employer 1, claimant worked between 16 and 36 hours per week for employer 2 during July and August 2000, and that she made \$5.25 per hour. Claimant testified that she was having trouble doing the work at employer 2. The hearing officer determined that claimant had been released to light-duty

work on August 29, 2000, and that in September 2000, her doctor changed her work restrictions to include no use of the left arm. The hearing officer could find from claimant's testimony and the off-work slips that claimant was unable to obtain or retain her preinjury wage from March 24, 2000, through the date of the hearing.¹ The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier contends the hearing officer erred in determining that it waived the right to contest the compensability of the claim. Carrier asserts that it had no duty to contest because there was no damage or harm to the structure of claimant's body, and nothing to contest, citing Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.). We have affirmed the determination that claimant did have a compensable injury and, thus, damage or harm to the physical structure of her body. Therefore, carrier's assertion that it had no duty to contest the compensability of the claim is without merit. See Texas Workers' Compensation Commission Appeal No. 992907, decided February 10, 2000.

Carrier contends the hearing officer erred in determining that claimant had not yet reached MMI. Carrier asserts that, if claimant did have an injury, she reached MMI on May 25, 2000, with a zero percent impairment rating, as certified by Dr. F, on May 27, 2000. Carrier notes that Dr. S testified that claimant did not have an injury or any disability. On August 23, 2000, the designated doctor, Dr. H, certified that claimant had not reached MMI. The designated doctor diagnosed left lateral epicondylitis and left mild ulnar nerve symptoms. On December 1, 2000, the designated doctor stated that his assessment and MMI determination was based on claimant's subjective complaints as well as on his objective clinical findings, including her EMG results. Dr. H stated that claimant might benefit from surgery. It is apparent that the hearing officer considered whether the great weight of the other medical evidence is contrary to the designated doctor's report, and determined that it is not. We conclude that the hearing officer's MMI determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

¹There was no issue of bona fide offer in this case and claimant denied that employer 1 offered her any work that she could perform after the injury.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge