

APPEAL NO. 011802
FILED SEPTEMBER 20, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 16, 2001, the hearing officer resolved the sole disputed issue by determining that the respondent's (claimant) compensable injury of _____, does include an injury to the right hand, in addition to the right thumb. The appellant (carrier) asserts on appeal that this determination is against the great weight of the evidence and should be reversed. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties submitted their respective cases to the hearing officer based upon documentary evidence, predominantly medical reports. This evidence reflects that on _____, while working as a dishwasher in a cafeteria, the claimant cut his right thumb on glass in a tub of dishes; that his wound was treated by Dr. O; that he developed multiple abscesses on the end of the thumb which were drained and treated with antibiotics; that he continued to have right hand pain accompanied by an inability to completely grasp with that hand; that later in 1996 he was diagnosed with reflex sympathetic dystrophy (RSD) in the right hand and also with some involvement in the left; and that he developed swelling with fluctuants on the back of his hand which required draining in the operating room on October 15, 2000. Dr. F, the carrier's required medical examination doctor, assigned the claimant an impairment rating of 11% on December 29, 1996, citing diagnostic codes for injury to a thumb, osteoarthritis, and joint pain. In his December 27, 1996, narrative report, Dr. F set out his findings upon clinical examination of the hands and stated the diagnosis as RSD of the right hand with some involvement of the left hand. Dr. O opined on December 29, 2000, that "in all probability is related to his initial injury several years ago" and, on January 10, 2001, that "in all probability this [swelling and fluctuance] may be related to his initial Workmen's Compensation injury several years ago."

The carrier introduced the November 15, 2000, peer review report of Dr. R addressing the issue of the reasonableness and necessity of the claimant's treatment for the _____ injury. Dr. R discussed at some length the claimant's drug addiction and imprisonment but concluded that it was improbable but not impossible that the claimant would still have pain from a healed thumb laceration after four years, and that it is medically improbable that the _____, accident or subsequent treatment could have resulted in cellulitis or an abscess on the back of the right hand. Dr. R's report of January 16, 2001, again based on his review of the medical records, states that it is medically improbable that the claimant's thumb laceration with the infection would result in fluctuant swelling in the dorsum of the hand due both to the anatomy of that area and to the three-year passage of time since the accident.

The claimant had the burden to prove with a preponderance of the evidence that his _____, compensable injury included injury to his right hand in addition to his thumb. We are satisfied that the expert medical evidence in the form of Dr. O's reports, together with the report of Dr. F, sufficiently support the challenged determination and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). While the carrier's evidence alluded to other possible causes, including drug addiction and an intervening auto accident, the carrier did not attempt to prove that either or both of these events were the sole cause of the claimant's claimed hand injury and the carrier would have the burden of proof of a sole cause defense.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TIG PREMIER INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**FRANK A. MONTEMARANO
5205 NORTH O'CONNOR BLVD.
IRVING, TEXAS 75039.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge