APPEAL NO. 020320
FILED MARCH 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 20, 2001. The record was left open for receipt of a Texas Workers' Compensation Commission (Commission) required medical examination (RME) doctor report and closing argument. The record closed on January 2, 2002. The issues were did the appellant (claimant) sustain a compensable injury on _____ (all dates are 2001 unless otherwise noted), and did the claimant have disability. The hearing officer determined that the claimant sustained a compensable "left upper back/shoulder [injury] . . . in the form of a strain/sprain" and that the claimant had disability from August 25 through September 9.

The claimant appealed, contending that extent of injury was not an issue before the hearing officer, who erred by finding a strain/sprain to the left upper back/shoulder; that the hearing officer erred in making a finding regarding an EMG; and that the hearing officer's finding on disability was contrary to the Commission RME doctor's report. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer found that the claimant "suffered [a compensable] injury to his left upper back/shoulder . . . in the form of a strain/sprain" and also made a finding of fact that "[a]n EMG indicated no radiculopathy but a left [CTS] not related to the injury and myofascial pain syndrome." The claimant's appeal attacks the hearing officer's determinations on the basis that extent of injury was not an issue before the hearing officer. In Texas Workers' Compensation Commission Appeal No. 002898, decided January 29, 2001, the Appeals Panel commented:

> We have encouraged hearing officers to indicate the nature of the injury when determining whether an injury existed. However, we have also stated that it is not appropriate for a hearing officer to make a final determination on the issue of extent of injury when the issue of extent of injury is not before the hearing officer. *See* Texas Workers' Compensation Commission Appeal No. 001239, decided July 13, 2000.

In the present case, we do not read the hearing officer's decision as limiting the claimant's injury to a left upper back/shoulder strain/sprain or that the claimant is precluded from raising an extent-of-injury issue. Regarding the finding of what the EMG indicated, it is clear to us that the hearing officer was only paraphrasing the Commission RME addendum of November 30 and, as such, does not constitute a finding that "a left [CTS is] not related

to the injury." We do not read the hearing officer's decision as resolving the left hand condition.

Regarding the disability determination, disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at the preinjury wage. We would note that an injured employee can be at an end to disability but still not be at maximum medical improvement. The hearing officer found disability from August 25 through September 9 based on the hospital emergency room (ER) report taking the claimant off work for two weeks. The hearing officer further found that the claimant "has not returned to work but did not have medical reports indicating he could not return to work." We have frequently noted that the testimony of a claimant alone on the issue of disability, if believed by the hearing officer, is sufficient to support a finding of disability. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). We do not read the hearing officer's finding to require medical evidence to support a finding of disability and read the finding as simply stating a fact.

The hearing officer obviously read the Commission's RME doctor's report dated November 15, the accompanying EMG, and the RME addendum dated November 30 and determined that the doctor's comments about the claimant's ability to use his left arm, including the comment "cannot work with his left UE elevated," as not requiring a finding of disability after September 9. The RME doctor's impression of a "[t]horacic sprain/strain syndrome" is similar to the ER report. The doctor comments that "the CTS is not considered to be part of the compensable injury" but that is not dispositive of an extent of injury or disability after November 20, the date of the CCH.

The hearing officer's decision is not against the great weight and preponderance of the evidence (Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)), and, for the reasons stated, we affirm the hearing officer's decision and order.

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

HAROLD FISCHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge