

APPEAL NO. 020637
FILED MAY 2, 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 February 15, 2002. The hearing officer resolved the disputed issue in (Docket No. 1) by deciding that the appellant's (claimant) compensable injury of right cubital tunnel syndrome (CuTS) on March 8, 2000, did not extend to include an injury to his right wrist in the form of carpal tunnel syndrome (CTS). In (Docket No. 2), the hearing officer determined that the claimant did not sustain a compensable injury in the form of an occupational disease (bilateral CTS) with a date of injury of _____. However, the hearing officer resolved that the claimant had disability from his March 8, 2000, compensable injury from _____, through January 27, 2001. The claimant appealed the hearing officer's determinations on sufficiency grounds, and also challenged the hearing officer's refusal to add an additional issue (carrier's waiver) at the CCH. The claimant also alleges that the hearing officer was generally unfair to the claimant, particularly with respect to the hearing officer's denial of the claimant's motion requesting the addition of the waiver issue, filed after the benefit review conference (BRC) but before the CCH. The respondent (carrier) responded, requesting affirmance.

DECISION

Affirmed.

We first address the claimant's argument that the hearing officer was unfair or biased against the claimant in his evidentiary rulings and otherwise. Upon a complete review of the record, we find no evidence that the hearing officer acted in a biased manner, for or against either party. In addition, the hearing officer did not abuse his discretion in ruling that the claimant's requested new waiver issue could not be added at the CCH. It appears that the hearing officer followed guiding rules and principles with respect to his ruling, particularly since the claimant failed to request the issue at the BRC, a prerequisite for having the issue certified to the CCH, and failed to respond to the BRC report. *See*, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7); *see, also, Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986).

Regarding the claimant's complaint concerning the effectiveness of his ombudsman, we only note that the hearing officer advised the claimant that the ombudsman was not a lawyer and that the CCH had legal consequences, asking thereafter if the claimant wished to proceed. The claimant said he wanted to proceed with the ombudsman and that he had had the requisite opportunity and time to discuss and prepare the claimant's case. We note that the claimant's allegation that the ombudsman did not act as he should have is with respect to a time frame prior to the CCH so the claimant could have complained at the CCH. He did not so complain had he chosen to do so. We do not find merit in this complaint.

The hearing officer did not err in determining that the claimant's compensable right CuTS of _____, did not extend to include left or right CTS or any other injury of the right wrist. Although another fact finder may have reached a different conclusion, the hearing officer found that while the claimant did have bilateral CTS, he did not meet his evidentiary burden in establishing either that the bilateral CTS naturally resulted from the compensable right CuTS or that his job duties with the employer were a producing cause of the CTS. In support of his finding, the hearing officer pointed out that the medical records only speculated that the claimant's CTS was caused by his employment.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury in the form of an occupational disease (bilateral CTS) on _____. The evidence supports the hearing officer's determination that the date the claimant knew or should have known that his CTS was work-related was _____, the date of his compensable injury. The claimant testified that he began having symptoms of both CuTS and CTS prior to the _____, date of injury. On appeal, the claimant challenges the hearing officer's determination that the date of injury for the bilateral CTS was _____, and not _____, which was the date he proposed, because he did not see a doctor for either the CuTS or the CTS until August of 2000. However, even if we decided that the hearing officer erred in determining the date of injury for the claimant's CTS, which we do not, the claimant still would not prevail, as the hearing officer determined that the claimant did not prove a causal relationship between his bilateral CTS and his employment.

The hearing officer did not err in determining that the claimant had disability as a result of his compensable right CuTS from _____, until January 27, 2001. The period of disability is supported by the medical records in evidence and by the claimant's testimony.

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). Upon our review of the record, we conclude that the hearing officer's determinations regarding the claimant's bilateral CTS and disability are supported by the evidence, and that they 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); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

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Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge