

APPEAL NO. 031714
FILED AUGUST 6, 2003

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 May 22, 2003, in Fort Worth, Texas, with Cheryl E. Dean presiding as the hearing officer. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include an injury to the cervical spine, depression, reflex sympathetic dystrophy (RSD) of the right arm and/or right upper extremity, and the diagnosis of right thumb De Quervain's syndrome and that the claimant had disability for the period from August 26 to October 11, 2002, as a result of her compensable right wrist/hand strain/sprain injury. In her appeal, the claimant asserts error in the hearing officer's determination that her compensable injury does not include the disputed conditions and that she did not have disability from October 12, 2002, to March 26, 2003, the date she reached maximum medical improvement (MMI). In addition, the claimant contends that the hearing officer erred in failing to make a disability finding for the period from June 4 to August 25, 2002. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed, as modified.

We find no merit in the carrier's assertion that the claimant's appeal was untimely. In her appeal, the claimant acknowledges that she received the hearing officer's decision and order on June 6, 2003. On June 17, 2001, Section 410.202 was amended to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal period. Thus, the 15-day period to file a timely appeal in this case ran on Monday, June 30, 2003. The claimant's appeal is postmarked June 27, 2003, before the expiration of the 15-day period. In addition, the appeal was received by the Texas Workers' Compensation Commission on July 1, 2003, well before the 20-day receipt period of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c)(2) (Rule 143.3(c)(2)) expired on Monday, July 7, 2003.

The claimant had the burden to prove that her _____, compensable injury included a cervical injury, depression, RSD of the right arm/upper extremity, and right thumb De Quervain's syndrome. That issue presented a question of fact for the hearing officer. There was conflicting evidence presented on the disputed issue. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained her burden of proving that her compensable injury included the injuries and conditions at issue. The hearing officer was acting within her province

as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also had the burden to prove whether and when she had disability as a result of her compensable right hand/wrist sprain/strain injury. The hearing officer was acting within her province as the fact finder in determining that the claimant's disability related to the compensable injury ended on October 11, 2002, and that the claimant's disability did not extend to the March 26, 2003, date of MMI. Our review of the record does not reveal that the hearing officer's determination that the claimant's disability ended on October 11, 2002, is so contrary to the great weight of the evidence as to compel its reversal on appeal. Cain, *supra*. The question remains as to the hearing officer's not having made a disability finding concerning the period from June 4 to August 25, 2002. At the hearing, it was apparent that the period of August 26, 2002, to March 26, 2003, was the disputed period of disability. The carrier did not dispute that the claimant had disability from June 4 to August 25, 2002, and indeed it appears that the carrier paid temporary income benefits (TIBs) for that period. In her decision, the hearing officer only made a finding concerning the period of disability that was actually disputed and her having done so is understandable based on the evidence and argument that was presented on the disability issue. However, the claimant's attorney contends on appeal that because the hearing officer did not find disability for the period of time where the carrier paid TIBs and did not dispute disability, the carrier has now treated the TIBs it paid in the period from June 4 to August 25, 2002, as an overpayment and has offset them against the claimant's impairment income benefits. We agree with the claimant's characterization that the carrier did not dispute disability in this case until August 26, 2002, when a series of light-duty job offers were given to the claimant and she unsuccessfully attempted to return to work. That is, the only disputed period of disability was the period from August 26, 2002, to March 26, 2003. The hearing officer resolved that issue partially in the claimant's favor and determined that the claimant had disability from August 26 to October 11, 2002. Based upon that determination, we believe it necessarily follows that the hearing officer implicitly determined that the claimant had disability from June 4 to August 25, 2002, the period after the injury and before the light-duty offers arose. Accordingly, we modify Finding of Fact No. 7, Conclusion of Law No. 4, and the Decision section by changing the reference to the disability period as August 26 to October 11, 2002, to the period from June 4 to October 11, 2002.

As modified to reflect that the claimant's disability ran from June 4 to October 11, 2002, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge