APPEAL NO. 032458
FILED NOVEMBER 7, 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 (CCH) was held on August 25, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury on _____, was a contusion to her right hand and did not extend to or include carpal tunnel syndrome (CTS); that the claimant did not have disability from December 5, 2001, through February 20, 2002, as a result of her compensable injury; that the claimant reached maximum medical improvement (MMI) on July 24, 2001, as determined by Dr. G, the Texas Workers' Compensation Commission (Commission)-selected designated doctor; and that the claimant's correct impairment rating (IR) of her compensable injury, without the alleged CTS as part of the compensable injury, is 0% from the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The claimant appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence, and contended that the "inadequate interpreter service contributed to the hearing officer's misinterpretation and erroneous conclusions." The appeal file does not contain a response from the carrier.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

We first address the issue of the adequacy of the interpreter. The claimant's argument on the inadequacy of the interpreter is without explanation. We note that no objection was made to the adequacy of the interpreter at the CCH and thus no error has been preserved.

We reform the decision portion of the Decision and Order to correct the typographical error which states that the claimant does not have disability from December 5 through February 20, 2001. The correct ending date for disability is February 20, 2002.

EXTENT OF INJURY

Extent of injury is a factual question for the hearing officer to resolve. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d

286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer was not persuaded that the claimant sustained her burden of proving the causal connection between her compensable injury and her CTS. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.) Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DISABILITY

The hearing officer specifically found that during the period of December 5, 2001, through February 20, 2002, any inability to obtain and retain employment at wages equivalent to the claimant's wages prior to _____, was due directly to the CTS that she suffered at that time. The claimant did not dispute this finding on appeal. Given our affirmance of the determination that the claimant's compensable injury did not extend to her CTS, we likewise affirm the determination that the claimant did not have disability for the period at issue.

MMI AND IR

The hearing officer erred in determining that Dr. G correctly determined that the claimant reached MMI as of July 24, 2001, and correctly assigned the claimant a 0% IR. A review of the record reflects that Dr. G did not assess a date of MMI or an IR for the claimant. In both Report of Medical Evaluation (TWCC-69) forms from Dr. G in evidence, Dr. G concluded that the claimant was not at MMI and did not assign an IR. In the narratives attached to the TWCC-69s in evidence from Dr. G, it is clear that Dr. G reached his conclusion considering the claimant's CTS condition. We acknowledge that Rule 130.6(d)(5) provides for multiple certifications of MMI and IR from the designated doctor that take into account the various interpretations of the extent of the injury. However, in the instant case, the attached narratives do not certify any alternative dates of MMI or IR which exclude the CTS and therefore the hearing officer's determinations regarding MMI and IR are in error.

For a claim for workers' compensation benefits based on a compensable injury that occurred before June 17, 2001, Section 408.125(e) provides that if a designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. We remand the case to the hearing officer to resolve the issue of MMI and IR. If the hearing officer determines that there is not a report from a doctor in evidence that considers only the compensable injury which can be adopted, then he shall request clarification from the current designated doctor in this case with

instructions to certify MMI and assign an IR based solely on the compensable injury since the extent question has now been resolved.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge