

APPEAL NO. 032662
FILED DECEMBER 1, 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 September 12, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the claimant's compensable injury of _____, includes an injury to the claimant's neck and bilateral elbows; (2) the claimant's compensable injury of _____, includes an injury to the claimant's cervical spine in the form of radiculopathy and an injury to her bilateral elbows in the form of cubital tunnel syndrome; (3) the claimant had disability resulting from her compensable injury of _____, from May 22, 2001, through March 16, 2003; (4) the claimant had good cause for failing to submit to the required medical examination (RME) on November 26, 2002, and the claimant is entitled to temporary income benefits from November 26, 2002, through February 17, 2003; and (5) the claimant's impairment rating (IR) is 16% as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The respondent (carrier) appeals the hearing officer's determinations on all of the disputed issues, contending that those determinations are against the great weight of the evidence. No response was received from the claimant.

DECISION

Affirmed.

The carrier agreed at the CCH that the claimant sustained a compensable repetitive trauma injury to her bilateral wrists. The claimant had the burden to prove the extent of her compensable injury. Conflicting evidence was presented on the issue of the extent of the claimant's compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the issue of the extent of the claimant's compensable injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer's decision on the disability issue is supported by the claimant's testimony and the reports of the treating doctor, and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

Conflicting evidence was presented on the issue of whether the claimant had good cause for failing to submit to the RME examination. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6(h) (Rule 126.6(h)). We conclude that the hearing officer's

determination that the claimant had good cause for failing to submit to the RME examination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

The parties stipulated that the claimant reached maximum medical improvement on February 17, 2003. Section 408.125(e) provides that if the 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. The carrier's RME doctor assigned a 2% IR; the referral doctor assigned a 25% IR; and the designated doctor assigned a 12% IR for the claimant's wrists, and a 16% IR for the claimant's wrists and neck. The hearing officer found that the 16% IR assigned by the designated doctor is not contrary to the great weight of the other medical evidence, and concluded that the claimant's IR is 16%. Although there is conflicting evidence on the IR issue, we conclude that the hearing officer's determination on that issue is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We affirm the hearing officer's decision and order.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge