APPEAL NO. 040328
FILED MARCH 22, 2004

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 January 26, 2004. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of _____, includes left trigger thumb and left elbow epicondylitis, but does not include left carpal tunnel syndrome (CTS) or a left ganglion cyst, and that the claimant had disability from March 25 through June 13, 2003.

The appellant/cross-respondent (carrier) appeals the extent-of-injury issue contending that the claimant did not sustain a repetitive trauma injury because the claimant's duties were neither repetitive nor traumatic, citing portions of the evidence, and that the claimant's compensable injury did not include left elbow epicondylitis and left trigger thumb. The claimant appeals, contending that he had not reached maximum medical improvement (MMI) as of October 1, 2003, and that the hearing officer's end date of disability was incorrect. The claimant also appeals the extent-of-injury issue asserting that left CTS and the left ganglion cyst should also be part of the compensable injury. The parties both responded to the other party's appeal.

DECISION

Affirmed.

The claimant was a sales associate in a store and alleges a compensable repetitive trauma injury caused by squeezing clips taking clothes on and off hangers with a date of injury of _____. The carrier accepted a compensable "left hand sprain/strain . . . . pain to the hand." The claimant saw a number of doctors including Dr. S who diagnosed left elbow epicondylitis and left trigger thumb. The hearing officer's Statement of the Evidence summarizes in some detail the findings of the various doctors the claimant saw. Even Dr. D, the carrier's required medical examination doctor, conceded that the claimant may have possibly had mild left elbow tendonitis or epicondylitis initially but that it had resolved by January 2004. There was conflicting evidence regarding the extent of injury and we are satisfied that there was sufficient evidence to support the hearing officer's determination on this issue.

Regarding disability, the claimant continued to work light duty at the preinjury wage until March 24, 2003, when the claimant said that he was unable to continue. Various doctors took the claimant off work, or at least placed him on modified duty and no doctor has released the claimant to full duty. The hearing officer bases his determination regarding disability on a functional capacity evaluation dated May 28, 2003, which indicates that the claimant's occupation requires light physical demand and that the claimant had an ability to perform at the "Light/Med physical demand level." The hearing officer also relied on a report dated May 13, 2003, where Dr. B, a referral

doctor, said the claimant could "resume regular duty within a few weeks after receiving light duty" and a Work Status Report (TWCC-73) dated May 13, 2003, from Dr. B placing the claimant on light duty "through 06/13/2003." The claimant's main challenge to the disability date is that he has not been certified at MMI. We note that the fact that the claimant may not have reached MMI (as defined in Section 401.011(26)) does not mean that the claimant necessarily has disability as defined in Section 401.011(16). Conversely, an injured employee may have disability after MMI but pursuant to section 408.101(a) would not receive temporary income benefits. In any event, an injured employee may move in and out of disability. Texas Workers' Compensation Commission Appeal No. 961441, decided September 11, 1996.

Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision 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.

The hearing officer's decision and order are affirmed.

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

PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge