APPEAL NO. 040484
FILED APRIL 26, 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 February 5, 2004. The hearing officer determined that the appellant/cross-respondent's (claimant) _____, compensable injury extends to and includes an injury to the right wrist; that the claimant had disability from December 13, 2002, through July 13, 2003; and that the claimant is not entitled to change treating doctors from Dr. B to Dr. J pursuant to Section 408.022. The claimant appealed the hearing officer's determination regarding the change of treating doctors. The respondent/cross-appellant (carrier) responded, urging affirmance of that determination. The carrier appealed the hearing officer's determinations regarding extent of injury and disability. The appeal file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

Conclusion of Law No. 4 states that the "[c]laimant had disability resulting from an injury sustained on _____, from December 13, 2002, through July 13, 2003." The Decision states that the claimant had disability from December 13, 2002, through July 13, 2003. However, the evidence adduced from the claimant at the hearing was that he had disability from December 13, 2002, through July 31, 2003. In the Statement of the Evidence, the hearing officer wrote that "[i]t is credible [c]laimant could not return to work doing his job with one hand. Claimant's disability is from December 13, 2002, through July 31, 2003." Additionally, Finding of Fact No. 5 indicates that the hearing officer found disability from December 13, 2002, through July 31, 2003. Because we find the above-mentioned references to July 13, 2003, as the ending date of disability to be merely typographical errors, we reform the decision and order to reflect that the claimant had disability from December 13, 2002, through July 31, 2003.

The claimant attached an Employee's Request to Change Treating Doctors (TWCC-53) to his appeal, which was not offered or admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. The claimant did not explain why he was unable to obtain this document at an earlier time. We conclude that the attachment to the claimant's appeal does not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the document, we conclude that its admission on remand would not have resulted in a different decision. The TWCC-53 merely states the reasons that the claimant was requesting a change in treating doctors. The claimant testified as to these reasons at the hearing, and the hearing officer was not persuaded that they met the requirements of Section 408.022. There was no dispute that the claimant filed a TWCC-53. *See* Texas

Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

The extent of the claimant's compensable injury, whether he had disability, and whether he was entitled to change treating doctors are all questions of fact for the hearing officer to resolve. 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 was persuaded that the claimant sustained his burden of proving that his compensable injury extends to and includes an injury to his right wrist, and that he had resulting disability. Additionally, the hearing officer was not persuaded that the claimant sufficiently established that he should be entitled to change treating doctors pursuant to Section 408.022. The hearing officer was acting within his province as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determinations are 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 those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed herein.

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

RICHARD A. SHANNON
6409 STEERE TRAIL
AUSTIN, TEXAS 78749.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge