

APPEAL NO. 040556
FILED APRIL 19, 2004

This appeal after remand 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 November 12, 2003. In Texas Workers' Compensation Commission Appeal No. 033240, decided February 9, 2004, the Appeals Panel remanded the case to the hearing officer for reconstruction of the record because although the record in this case was sent by the Texas Workers' Compensation Commission's (Commission) field office to the central office, it never arrived. The hearing officer noted in his decision and order that no re-hearing was necessary because a copy of the court reporter's transcript was available and the parties had copies of the exhibits submitted at the prior CCH. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury does not extend to nor include carpal tunnel syndrome (CTS) in her left wrist. The claimant appealed, arguing that the hearing officer erred by applying the "direct and natural result" analysis to the evidence. The respondent (carrier) responded, contending that the evidence and law fully support the decision and order of the hearing officer on the issues complained of by the claimant.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury that included a ganglion cyst on her left wrist. At issue was whether the claimant's compensable injury of _____, extends to and includes CTS in her left wrist. The claimant contends that the hearing officer erred by applying the "direct and natural result" analysis to the evidence. The hearing officer specifically found both that as of _____, the claimant did not sustain an injury to her left wrist in the form of CTS from repetitive trauma that arose out of and was in the course and scope of her employment, and that the claimant's ganglion cyst on her left wrist was not a producing cause of CTS in her left wrist nor was the CTS a direct and natural result of her ganglion cyst. A review of the record reflects that the carrier argued that the CTS was not related to the ganglion cyst injury at the CCH.

Regarding the issue of extent of injury, both the claimant and the carrier presented evidence to support their respective positions. After reviewing the medical evidence and the testimony of the claimant, the hearing officer determined that the compensable injury does not extend to or include the CTS in her left wrist. The claimant had the burden to prove that the compensable injury extends to and includes her complained-of condition. There is conflicting evidence in this case. 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). The finder of fact may believe that the claimant has an injury or condition, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no

writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NATIONAL SURETY CORPORATION** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge