

APPEAL NO. 040750
FILED MAY 17, 2004

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 033255, decided January 21, 2004, for reconstruction of the record. On remand, the hearing officer obtained a copy of the transcript of the October 21, 2003, hearing and the parties' exhibits. No hearing was held on remand and the hearing officer reissued his original decision. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that her compensable injury includes her cervical spine and right wrist; and that the claimant had disability, as a result of her compensable injury, from June 17, 2002, through the date of the hearing. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable repetitive trauma injury and that her compensable injury included her cervical spine and right wrist. The claimant had the burden of proof on those issues and they presented questions of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer was persuaded that the claimant sustained her burden of proof through her testimony as to the repetitively traumatic activities she performed at work and the medical opinions of the claimant's treating doctor, the required medical examination (RME) doctor selected by the Texas Workers' Compensation Commission, and the RME doctor selected by the carrier. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury and extent determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse those determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We likewise find no merit in the assertion that the hearing officer erred in determining that the claimant had disability under Section 401.011(16) from June 17, 2002, through the date of the hearing. Our review of the record does not reveal that the hearing officer's disability determination is so contrary to the great weight of the evidence as to compel its reversal. In addition, we find no merit in the assertion that the

claimant did not have disability in this case because she was being paid temporary income benefits (TIBs) for a prior compensable injury during a portion of the time that she was found to have disability in this case. Although the claimant cannot receive TIBs for two injuries at the same time, she can have disability for both injuries at the same time because there can be more than one producing cause of disability. See *generally* Texas Workers' Compensation Commission Appeal No. 972401, decided January 2, 1998; Texas Workers' Compensation Commission Appeal No. 93794, decided October 20, 1993. The carrier in this instance may only be liable for a portion of TIBs in the period when the claimant had disability as a result of both compensable injuries; however, we cannot agree that the hearing officer erred in not apportioning liability for TIBs because that issue was not before him.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge