

APPEAL NO. 050157
FILED MARCH 30, 2005

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 January 3, 2005. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury in the form of an occupational disease; that the date of injury (DOI) is (date of injury); and that the claimant had disability resulting from the injury sustained on (date of injury), from May 18 through August 18, 2004. The appellant/cross-respondent (carrier) appealed the hearing officer's injury, DOI, and disability determinations. Additionally, the carrier asserted that the hearing officer failed to make findings regarding disability for the time period of August 18, 2004, to the date of the CCH. The claimant appealed the disability determination asserting that the hearing officer rephrased and limited the issue by determining disability for only the period of May 18 through August 18, 2004, and failed to determine disability after August 18, 2004. The claimant responded that the injury and DOI determinations should be affirmed. The appeal file does not contain a response from the carrier.

DECISION

Affirmed in part, reversed and remanded in part.

The claimant had the burden to prove she sustained a compensable injury and the DOI. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. She testified that she informed her doctor of her hand and wrist pain on (date of injury), and she was told that the pain was probably a work-related injury. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the DOI for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Conflicting evidence was presented at the CCH. 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 from the evidence presented. We conclude that the hearing officer's injury and DOI determinations 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).

With regard to disability, both the claimant and carrier assert that the hearing officer failed to determine whether the claimant had disability after August 18, 2004. The claimant asserts that the hearing officer rephrased and limited the disability issue to the time period of May 18 through August 18, 2004, only. We note that the issue listed on the benefit review conference report and the issue agreed to by the parties at the CCH was "[i]f the [c]laimant did suffer a compensable injury on [alleged date of injury] does she have disability," and if so, for what period. The hearing officer's decision and

order states the disability issue as: “[i]f the claimant did suffer a compensable injury, does she have disability from May 18, 2004 to August 18, 2004?” The hearing officer determined that the “[c]laimant had disability resulting from the injury sustained on [date of injury], from May 18, 2004 through August 18, 2004.” The hearing officer commented in decision that (Dr. D) diagnosed the claimant with carpal tunnel syndrome and took her off work from May 18 through August 18, 2004, a three-month period. It is unclear from the decision and order whether the hearing officer found that the claimant had disability from May 18 through August 18, 2004, and at no other time, or whether the hearing officer limited the disability issue to the time period of May 18 through August 18, 2004, only, based on Dr. D’s report. The claimant asserts that the evidence shows that the claimant had disability for the entire period claimed, from May 18, 2004, through the date of the CCH. Accordingly, we reverse the hearing officer’s disability determination and remand for the hearing officer to consider testimony and documentary evidence in determining the period of disability in dispute.

We affirm the hearing officer’s injury and DOI determination.

We reverse and we remand the hearing officer’s disability determination for the hearing officer to determine whether the claimant had disability resulting from the (date of injury), injury, and if so, for what periods.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers’ Compensation Commission’s Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers’ Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge