

## APPEAL NO. 93782

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S. art. 8308-1.01 *et seq.*), a contested case hearing was held in (city), Texas, on August 6, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain an injury to her lower back on (date of injury), at the time she suffered a compensable injury to her neck. The claimant appeals and asks for our reversal urging, in essence, that there is sufficient evidence to establish that she injured her lower back at the time of her neck injury on (date of injury). Respondent (carrier) argues that the evidence is sufficient to support the findings of the hearing officer and requests that the decision be affirmed.

### DECISION

Determining that the evidence of record is sufficient to support the findings and conclusion of the hearing officer, the decision is affirmed.

The claimant, an LVN, sustained an injury to her neck on (date of injury), when she helped a bedridden patient out of bed with the aid of a hoist. Although the injury was not reported, according to the claimant's testimony, until September 9, 1991, (an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) signed by the claimant is dated "10-16-91") the carrier did not dispute the neck injury. In the TWCC-41, the claimant indicated that her right arm and neck were the parts of her body affected and that the nature of the injury was "cervical strain." She testified that although the medical records indicate that she complained only of pain and injury to her neck or cervical area, she did have pain all along her right side to her toes, and although she doesn't remember with certainty, she believes she told the doctor's about this. She testified that at first she thought she just had a "crick" in her neck but later it started paining her more and she read about her condition in a family medical book and decided to see a doctor. In an interview conducted with the claimant on September 18, 1991, she described her pain as being in her neck and right shoulder and arm, did not mention anything about lower back pain and responded "no" to a specific question "have you had any problems with your low back since this injury?" During the course of the next two years, she saw a number of doctors, had numerous diagnostic tests and underwent two surgeries to her neck, one in December 1991 and a second in December 1992.

With the exception of a Initial Medical Report dated "9-12-91" from (Dr. R), the first doctor the claimant saw, which indicates under the section entitled clinical assessment findings "right arm-thumb was cramping and hurt back," the medical records and medical histories prior to February 1993 are concerned with a cervical injury and treatment therefore. Dr. R, in a Specific and Subsequent Medical Report (Interim TWCC-64) dated "10-1-91" lists his diagnosis as "neck sprain." A statement dated February 1, 1993, from (Dr. K), the claimant's treating doctor and surgeon, indicates during a follow-up on the claimant, she "said since last Thursday, five days ago, she started having pain in the right side of her back radiated down her right leg." This is the initial indication in Dr. K's reports of a lower back condition. An earlier report of a physical examination by Dr. K, dated October 15, 1991,

states with regard to lower extremities that they "are more or less normal" and "both knee and ankle jerk are equal and symmetrical" and "no pathological reflexes were elicited." A second opinion examination report dated December 13, 1991 by (Dr. C) outlines the cervical injury problems and indicates that lower extremities "seem to be relatively intact in sensory and motor and reflex examinations." In a letter dated August 3, 1993, Dr. C was not able to give a definitive opinion as to whether the lower back condition was related to the incident of (date of injury).

An MRI of the lumbar spine on February 4, 1993, performed by a (Dr. P) indicated the following:

#### FINDINGS:

1. The lumbar vertebral body heights and spaces are well maintained with decreased water content in the degenerating L3-4 thru L5-S1 discs. There is no evidence of an acute fracture, stenosis or subluxation. The bone marrow pattern is normal. The conus is in normal position at L1. A shallow central herniation at L4-5 is noted but without mass effect upon the normal appearing thecal sac. No paraspinal or epidural mass lesions are identified.

#### IMPRESSION:

1. Spondylosis is noted at L3-4 thru L5-S1 with a shallow central herniation that does not indent the thecal sac. 2. There is no evidence of stenosis, neural foraminal narrowing or neoplasia.

A (Dr. D) in a report dated "8/3/93" stated:

Specific to the question that I've been asked, "Does she have low back pain secondary to her injury?" The answer is relatively simply (sic). [Dr. K] says that it is associated with the original injury but there is no information in his records or the other records that says that it is. The implication is that it wasn't of enough significance to be symptomatic to be mentioned.

I would then have to say she has had an asymptomatic disc which has occurred at some time in her life but I cannot associately place it at the time of injury that she mentions.

Dr. K states in a June 21, 1993, statement that "regarding [claimant's] back, in all reasonable medical probability her back complaints can be related to her original injury. I cannot say that it is not related as the patient gives a history of lifting a patient." Claimant's testimony was that she did not lift or have the weight of the patient on her back as the patient was in the hoist. She also testified with regard to a January 4, 1993, letter from Dr. K, which stated,

This is a follow-up on the above patient. She comes to the office today because she had a fall when getting into the shower. She slipped and hurt her neck on the left side.

that she only slipped in the shower and only went to the doctor to see if she had hurt her neck.

The hearing officer indicated in her DISCUSSION section that after reviewing the evidence and the extensive medical reports in the record that she was of the opinion that a preponderance of the credible evidence does not support claimant's allegation that her injury of (date of injury) extended to her lower back, as well as her neck, noting among other things, the some 19 to 20 months between the injury and medical reports indicating a low back complaint. It is also apparent that the hearing officer did not find the claimant's testimony to be convincing when weighed against the other evidence. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. We have repeatedly recognized that it is the hearing officer, as the finder of fact, who must resolve conflict and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992; Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. See Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This equally applies to situations where medical evidence is in conflict. See Highlands Underwriters Insurance Company v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Amarillo 1973, no writ). Only if we were to find, which we do not in this case, that the findings of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust would we have a sound basis to disturb her decision. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Appeal No. 92232, *supra*. There is sufficient evidence to support the findings and conclusions of the hearing officer. Accordingly, the decision is affirmed.

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

---

Joe Sebesta  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge