APPEAL NO. 93848

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On July 26, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that claimant injured herself at her home on (date of injury), and is entitled to no benefits for that injury; the hearing officer did determine that claimant is entitled to benefits resulting from a (date of injury), compensable injury, but found that any inability to work was solely caused by the (date of injury), injury. Appellant (claimant) asserts that the evidence indicates that the (date of injury), injury was a subsequent aggravation of the prior compensable condition and is compensable. Respondent (carrier) replied that the (date of injury), injury was a distinct injury and that the evidence sufficiently supports the decision of the hearing officer.

DECISION

We affirm.

At the hearing, the hearing officer announced that the only issue was whether the (date of injury), injury was a new injury and, if so, was it the sole cause of the current injury. (The benefit review conference had also reported an issue of maximum medical improvement (MMI), but the hearing officer severed it from consideration at this time and neither party objected to that action.)

Section 410.204(a) states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

On appeal the claimant disagrees with Findings of Fact Nos. 4, 5, 11, and 12 and the resulting Conclusions of Law Nos. 4 and 5. Those findings of fact stated:

4. The claimant sustained a compensable injury to her neck on (date of injury); the area injured was C5-6 and C6-7.

5.The claimant's treating doctor, (Dr. G-V), determined that she reached maximum medical improvement on July 7, 1992, and stated that he would release her to return to work on July 27, 1992.

11.The claimant had no radiculopathy of the upper extremities, no problems traceable to C7-T1, or a cervical strain prior to her act of reaching.

12.The claimant's injuries at C5-6 and C6-7 were not the producing cause of the problems traceable to C7-T1, the radiculopathy of the upper extremities, or the cervical strain.

The Appeals Panel determines:

The determination that claimant did not sustain an aggravation of a prior compensable injury when she injured her neck at home on (date of injury), is sufficiently supported by the evidence. The appealed findings of fact and conclusions of law are sufficiently supported by the evidence.

Claimant worked for (employing chain store) when her neck was hurt on (date of injury), by a box or boxes falling on her head as she was "reaching up for some boxes on top." An MRI of December 28, 1991, indicated a mild bulging disc at C5-6; a slight "prominence" at C6-7 (but read as "within limits of normal"); and "C7-T1: Normal."

Claimant's treating doctor was Dr. G-V. In a letter dated July 7, 1992, to representatives of the carrier, he said that claimant could return to work on July 27, 1992; he indicated that her neck and low back pain had not ceased. (An orthopedic surgeon, (Dr. O), on behalf of the carrier, examined claimant on July 7, 1992, and found that she could return to her job.)

On (date of injury), claimant testified that she was at home cleaning house and, "I was reaching up for the curtains, and I felt a sharp pain in my back and my neck." Her husband was at home, and she was taken to (hospital). The emergency room note shows that claimant related that she was reaching for curtains and felt a sharp pain in the neck--the x-ray was normal. Claimant's husband testified that he did not see the incident at home but that his wife told him about it; he verified claimant's testimony as to towels laying on the floor where the incident occurred.

Dr. G-V in a letter dated July 27, 1992, to representatives of the carrier, said, "every time we try to return this patient back to work, she seems to have another injury." Then on September 10, 1992, Dr. G-V said that claimant's history is "quite variable" and opined that he did not know what was correct. He indicated in an "office note" dated August 13, 1992, that he was confused because, "some of her statements are inconsistent." He then noted, "I will not change my records. We have tried to be as cautious as possible about putting down precisely what the patient says." Claimant testified that Dr. G-V told her that she could go to another doctor because "there was nothing he could do. There was nothing that he found that I had anything wrong with me."

Claimant saw (Dr. H) on December 4, 1992, one year after the compensable injury of (date of injury). In a letter by Dr. H dated February 22, 1992, (apparently written in February 1993, because the body refers to claimant's treatment by Dr. G-V and, "[s]he was subsequently seen in our office on 12-4-92 complaining of. . . intermittent pain in the cervical area. . . .") Dr. H also referred to claimant's history of two automobile accidents in April and August of 1989, in addition to her injury at work during (date). Dr. H stated a diagnosis of cervical sprain and lumbar sprain, and right hand pain-radiculopathy. Dr. H referred to an MRI (without giving its date) as reflecting "minimal posterior central disc bulge C5-6 and C6-7. . . ." In a handwritten "attachment" dated "12-4-92" to the 12-4-92 entry by Dr. H, claimant's history of a (date of injury), injury while reaching for curtains at home is recorded as producing pain in the C7-T1 area. Then Dr. H notes, "Now - pain is intermittent in C7-

T1 area relieved - lies flat exacerbates - (increased) driving (complains of) pain (left) hand."

On May 3, 1993, a letter from (Dr. HH) indicated that claimant's bulging discs account for her headaches and "radiculopathy of the upper extremities."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The hearing officer could question the credibility of the claimant based on Dr. G-V's records of inconsistencies in her history. *See* Sifuentes v. TEIA, 754 S.W.2d 784 (Tex. App.-Dallas 1988, no writ). The claimant's testimony only raises fact issues for the trier of fact to resolve. *See* Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The hearing officer could consider claimant's inconsistent statements to Dr. G-V along with the absence of evidence that claimant received any medical attention in September, October, and November 1992, prior to seeing Dr. H for the first time. *See* Texas Workers' Compensation Commission Appeal No. 92543, decided November 23, 1992. Notwithstanding the question of credibility of the claimant, the period without medical care, and Dr. G-V's opinion, the hearing officer also had to consider the variance in the statements of Dr. H and Dr. HH. While the letter of Dr. HH indicates a connection of the bulging discs (which were present prior to the (date of injury), injury) to the radiculopathy, the records of Dr. H may be interpreted as not indicating such a connection; Dr. H's entry in the "attachment" allows a reasonable inference that the (date of injury), injury was in the area of C7-T1 based on her pain reported at that level, an area not previously noted as being injured by the compensable injury of (date of injury). *See* Harrison v. Harrison, 597 S.W.2d 477 (Tex. Civ. App.-Tyler 1980, writ ref'd n.r.e.). The hearing officer may weigh medical evidence and resolve conflicts in medical evidence just as she does when considering other evidence. *See* Atkinson v. US Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.). The medical records of Dr. G-V and of Dr. H provide sufficient support for Findings of Fact Nos. 11 and 12. The MRI of (date), sufficiently supports Finding of Fact No. 4, and Dr. G-V's medical records, introduced by the claimant, sufficiently support the finding that Dr. G-V believed claimant could return to work and had reached her MMI prior to the (date of injury) injury. (While there was no issue as to MMI, the hearing officer did not find that MMI was "reached" or even that a doctor "certified" it to have been reached; as shown, the opinion as to MMI was made in connection with the statement concerning a return to work and shows Dr. G-V's attitude toward claimant's injury at the time.)

We note that the hearing officer correctly pointed out in her Decision and Order that the claimant is still entitled to benefits, which include necessary lifetime medical benefits, attributable to the (date of injury), compensable injury.

The Appeals Panel will not reverse a fact finder's decision because it could draw different inferences and conclusions from the evidence. *See* Garza v. Comm. Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Finding that the Decision and Order are not against the great weight and preponderance of the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge