

APPEAL NO. 94121

On January 11, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the hearing were: (1) whether the left shoulder condition of the respondent (claimant) resulted from his compensable injury of (date of injury); and (2) whether the claimant has disability from his injury of (date of injury). The parties stipulated that the claimant had no disability from his injury of (date of injury), from the date of injury to the date of the hearing. The hearing officer determined that the claimant's left shoulder condition resulted from his (date of injury), compensable injury, and that the claimant's injury of (date of injury), has not caused disability from (date of injury), to the date of the hearing. The hearing officer decided that the claimant is entitled to medical benefits for his left shoulder injury and that he is also entitled to temporary income benefits if he can establish disability for eight or more days. The appellant (carrier) contends that the hearing officer erred in determining that the claimant's left shoulder condition is part of his compensable injury.

DECISION

The hearing officer's decision and order are affirmed.

On (date of injury), the claimant was working as a car salesperson for (employer). The claimant testified that on that day he was walking through the body shop area on the employer's premises when he was struck by a car which was being driven out of the impound area by a coworker. There was no dispute that the claimant was in the course and scope of employment when the accident occurred. The claimant testified that he put his hands up and braced himself on the front of the car as the driver hit the brakes. The claimant said he was "jammed backwards" and was knocked to the ground. In a recorded statement, the claimant had said he was shoved backwards, but did not fall to the ground. In another recorded statement, the claimant had stated that he was knocked backwards on his buttocks. However, both recorded statements were consistent with his testimony at the hearing in regard to putting his hands on the front of the car.

The claimant was immediately taken to a hospital emergency room where he was diagnosed as having cervical myofascitis and a sprained left wrist. The claimant said that his whole left arm hurt, but that his left wrist bothered him the most. An x-ray of the neck showed spondylosis from the C5 disc to the C7 disc, and an x-ray of the wrist was normal. There is no indication that an x-ray of the left shoulder was done.

The claimant returned to work the next day and continued working for the employer until sometime in April 1992 when he quit or was terminated. He worked as a car salesperson for a second employer until July 1992 and then worked as a car salesperson for a third employer until the end of September 1992 when he was laid off. He subsequently obtained employment as a car salesperson with a fourth employer and was working at the

time of the hearing. The claimant testified that his injury had not prevented him from working.

The claimant testified that his left shoulder began to hurt him in July or August 1992, but also indicated it may have been in September 1992. The claimant said that if he locked a car or opened a car door, he would get pain in his left shoulder. Subsequent to the accident of (date of injury), he denied being involved in any incident, accident, or activity that caused his shoulder problem. He said that during the period he started having shoulder pain, he was doing mostly paperwork at his job and that he was not doing any strenuous work. He also denied having any injury or problem with his left shoulder prior to the accident of (date of injury).

On or about October 29, 1992, the claimant was examined by (Dr. S) who diagnosed a contusion of the left shoulder and prescribed physical therapy which the claimant undertook. An x-ray of the left shoulder was reported to be negative. Dr. S referred the claimant to (Dr. G), an orthopedic surgeon, who examined the claimant on December 11, 1992, and diagnosed a "possible rotator cuff tear vs. traumatic anterior subluxation." Dr. G's report reflected that the claimant told him about the (month) accident, as he had Dr. S, and that his shoulder began hurting again in June 1992. Dr. G noted on physical examination that the claimant had decreased active and passive internal rotation and abduction of the left arm with a marked positive impingement sign. On Dr. G's recommendation, an arthrogram and CT scan of the claimant's shoulder were done on December 15, 1992. The arthrogram demonstrated no evidence of a tear of the rotator cuff, although a "lucency" involving the left humeral head was to be further evaluated by the CT scan. The radiology report of the CT scan stated:

1. There are changes consistent with capsular labral separation with a type III insertion anteriorly of the capsule. The glenoid labrum is minimally deformed, of uncertain significance. The superior ligaments appear lax.
2. There is an intra-osseous lesion within the left humerus involving the metaphyseal diaphyseal junction. This is evident on overexposed plain films as discussed during the arthrography. This may represent an intra-osseous lipoma, although there is some poor definition of the endosteal cortical surface of the metaphysis and because of such, further evaluation is recommended concerning the possibility of a benign versus malignant lesion.

In a patient note dated February 5, 1993, Dr. G noted that a bone scan was normal and recommended an arthroscopy procedure of the shoulder. The claimant testified that the carrier has refused to authorize that procedure. In a report dated March 16, 1993, Dr. G reported that the claimant had told him about the accident and injury of (date of injury), and Dr. G stated that the claimant has a "floridly abnormal examination of his left shoulder,"

and that "[t]his unequivocally is related to his injury and absolutely requires further investigation including surgical treatment."

At the request of the carrier (Dr. L) examined the claimant on or about April 16, 1993, and reported that the claimant had "frozen shoulder syndrome" and that that condition was the cause of the claimant's loss of motion and pain. Dr. L did not recommend surgery. Dr. L opined that "frozen shoulder more often than not is not related to trauma or injury but is known to occur occasionally after injury as well." Dr. L anticipated that the claimant would reach maximum medical improvement on April 16, 1994.

The hearing officer found that the compensable injury sustained on (date of injury), included not only cervical myofascitis and a left wrist sprain, as initially reported by the doctor at the hospital emergency room, but also included the claimant's left shoulder condition. The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the evidence, it is the duty of the finder of fact, in this case the hearing officer, to consider the conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.).

It has been held that under our workers' compensation law, the immediate effects of the original injury are not solely determinative of the nature and extent of the compensable injury and that "[t]he full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ). While there was a delay in the manifestation of the shoulder condition, such delay would not, as a matter of law, prevent the shoulder condition from being part of the compensable injury where, as here, the claimant has provided evidence establishing a causal connection between the original injury and the shoulder condition. See, e.g., Stodghill v. Texas Employers Insurance Association, 582 S.W.2d 102 (Tex. 1979); Texas Workers' Compensation Commission Appeal No. 92160, decided June 8, 1992. Such causal connection may be established from all of the evidence. See Appeal No. 92160, *supra*. In this case, Dr. G provided an expert medical opinion on causation which the hearing officer could give greater weight to than to the opinion of Dr. L. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Having reviewed the record, we conclude that the evidence sufficiently supports the hearing officer's findings of fact, conclusions of law, and decision, and that the findings, conclusions, and decision are not against the great weight and preponderance of the evidence.

Given the fact that the claimant stipulated that he did not have disability up to the date of the hearing, we find no merit in the carrier's contention that reversible error was committed when the Commission denied its request to subpoena records of the Texas Employment Commission and payroll and personnel records of two subsequent employers of the claimant.

We also find no merit in the carrier's contention that the hearing officer abused her discretion in not reciting in the statement of evidence portion of her decision statements from the claimant's recorded statements which the carrier contends were in conflict with the claimant's testimony at the hearing. There is no requirement in the 1989 Act or Commission rules that a statement of evidence be provided in a hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92650, decided January 20, 1993. We conclude that the statement of evidence provided by the hearing officer is a fair and accurate summary of the evidence presented at the hearing and that any conflicts in the evidence were to be resolved by the hearing officer.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Neseholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge