

APPEAL NO. 941383

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). At a contested case hearing on August 26, 1994, the parties stipulated that the respondent (carrier) had accepted liability for an (date of injury), injury to the appellant's (claimant) right arm. Following the hearing, the hearing officer determined that the carrier timely contested the compensability of claimant's claimed left wrist carpal tunnel syndrome (CTS) injury and claimant has not appealed that determination. Respecting the second disputed issue, namely, whether claimant's compensable injury of (date of injury), was a producing cause of his left wrist CTS, the hearing officer concluded that claimant failed to prove by a preponderance of the evidence that his left CTS arose out of and was a result of his (date of injury), injury. Claimant has appealed from that determination. Claimant also asserts in his appeal that the carrier failed to comply with a benefit review conference (BRC) agreement. The carrier's response maintains that the evidence was sufficient to support the hearing officer's determination on the compensability of claimant's left CTS and that not only did the carrier not breach the BRC agreement but that such was not a disputed issue at the hearing and should not be considered on appeal.

DECISION

Affirmed.

Claimant, the sole witness, testified that he was an iron worker and sustained his compensable injury of (date of injury), when a piece of iron struck his right elbow and forearm. He said that Dr. P became his treating doctor and that in addition to undergoing therapy, exploratory surgery was performed on his right elbow and he underwent two right wrist operations. According to claimant, the course of treatment for his right arm injury lasted until approximately February 1994. He said that aside from a laceration 20 years earlier, he had never had a problem with his left arm and hand before he began to experience numbness in late 1992, and that he has been diagnosed with left CTS. Claimant said he was 38 years of age, was right-handed, and had no use of his right hand for at least a year after his accident. He said that while he had not worked following his injury, he had performed such tasks as using a drill and hammer, doing yard work, working on cars, trying to build a wall, and chopping wood with an axe and sledge hammer. In doing these tasks he said he used his left hand more than his right, using the latter more for balance. He attributed his left CTS to overuse of his left hand necessitated by the injury to and treatment of his right arm and indicated that he was advised of that theory by Dr. P and several therapists. Claimant admitted on cross-examination that he had several felony convictions and had been imprisoned, a matter brought out by the carrier for the apparent purpose of impeaching claimant's credibility. However, given the complex nature of the causation issue involved in the disputed issue, lay testimony would not be particularly probative.

A February 3, 1994, report of Dr.E to the carrier stated that he had been asked to examine claimant and provide opinions on whether he concurred with a diagnosis of left

CTS and whether it was due to claimant's right upper extremity injury. Dr. E opined that claimant does have a left CTS. As to its causation, however, Dr. E stated: "I cannot ascribe the etiology as the work injury of (date of injury) to his right upper extremity and the fact he must rely upon his left hand. I do not have any etiologic determination for his developing his left CTS."

Dr. P's June 15, 1994, report stated that because of claimant's right elbow and hand problems, he began to overuse his left hand and that "[t]his caused him to develop a case of [CTS] in the left hand." Dr. P's report also stated that he had referred claimant to Dr. S and that she felt his problem was due to cervical paresthesia rather than a compression neuropathy at the left wrist. There was no opinion from Dr. S in evidence concerning the relationship between claimant's left hand symptoms and his compensable right arm injury.

After making a number of factual findings relating to both the appealed and unappealed issues, the hearing officer concluded that claimant had not shown by a preponderance of the evidence that his left CTS arose from and was the result of his (date of injury), compensable injury. This issue presented the hearing officer with a question of fact and, he being the sole judge of the weight and credibility of the evidence, resolved it adversely to the claimant. See the discussion of "follow-on" injuries in Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, and Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993. We cannot say the hearing officer's findings are so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951). The medical opinions on the cause of claimant's left hand problems were in disagreement. The general rules relating to expert medical evidence are that "[t]he opinion evidence of expert medical witnesses is but evidentiary, and is never binding on the trier of fact," and that "[t]he trier of fact may accept or reject such testimony in whole or in part." Houston General Insurance Company v. Pegues, 514 S.W.2d 492, 494 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). As the trier of fact, the hearing officer also judges the weight to be given expert medical testimony, and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We find no merit in claimant's assertion for the first time on appeal that the carrier breached the BRC agreement. The Appeals Panel confines its review to matters raised on the record of the contested case hearing and does not consider new issues raised for the first time on appeal. The agreement claimant appended to his appeal had the parties agreeing to a particular designated doctor to determine maximum medical improvement and impairment rating. The agreement further provided that the designated doctor would

examine both hands but that the carrier expressly reserved the right to dispute the left arm's being included in the (date of injury), injury.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge