APPEAL NO. 94148

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 30, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The only issue presented for resolution was: "Is the Claimant's cervical condition an effect naturally resulting from the Claimant's injury of (date of injury), entitling Claimant to reasonable and necessary medical treatment?" The hearing officer determined that the appellant's, claimant herein, compensable wrist injury of (date of injury), did not extend to her cervical condition.

Claimant contends that the hearing officer erred and that there is evidence to indicate a compensable neck injury, and requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

It is undisputed that claimant was employed as a vegetable cook at one of carrier's schools. Claimant testified that on (date of injury), as she was removing hamburgers from a food warmer, the door to the food warmer apparently rebounded and struck claimant on the outside of her right wrist. Claimant testified she yelled out in pain and shortly thereafter reported the injury to her supervisor stating she thought she may have broken a vein. (There is some contradictory evidence that claimant may have hit her hand on the steam table rather than the food warmer.) Claimant testified that she finished her shift and later that day went to the hospital emergency room (ER) for treatment of her hand injury. There is some testimony by claimant she went to the ER on other occasions but no reports are in evidence and the dates and reasons for such visits, if any, are not clear. Claimant was referred by the ER to (Dr. G) who saw claimant for the first time on November 13, 1991. Dr. G performed hand surgery, as noted below, on November 26, 1991, but claimant's condition did not improve. Claimant subsequently saw a number of doctors, usually on a referral basis, including (Dr. RC) for a second opinion for spinal surgery. Claimant testified she had advised Dr. G, and others of pain in her neck, shoulder and back all along, but the medical records do not document any cervical complaints until May 1992. Eventually one of claimant's doctors, (Dr. PC), in a report dated September 22, 1993, indicated a causal connection between the warmer door striking claimant's hand and "mild bulges" in the cervical area of the spine. Claimant contends that her cervical problems are the result of her initial injury of (date of injury).

The medical evidence includes an Initial Medical Report (TWCC-61) dated November 15, 1991, from Dr. G where he discusses only the right hand injury with a diagnosis of possible carpal tunnel syndrome (CTS) and DeQuervain's disease. On November 26, 1991, Dr. G performed the following surgical procedures:

OPERATION: Decompression of median and ulnar nerve at the wrist right hand. Tenovaginotomy release radial and dorsal aspect of right wrist. Dequervains radial and dorsal aspect right wrist.

In a Specific and Subsequent Medical Report (TWCC-64) dated December 17, 1991, Dr. G stated claimant "is doing fine" and notes only "stiffness around the wrist and fingers." In another TWCC-64, dated October 23, 1992 (some 10 months later), Dr. G continues to note complaints about the right forearm and referred claimant to (Dr. R) "for pain management for the right forearm."

Claimant was seen by (Dr. S) on May 8, 1992, for "right upper extremity pain." Dr. S refers to Dr. G's treatment and surgery and notes complaints of "tremendous pain in the shoulder, elbow and hand region . . . ." Dr. S is concerned about the shoulder pain but finds "x-rays: of the shoulder are normal." A June 2, 1992, progress note shows an "MRI of the spine is normal. EMG nerve conduction velocity is normal. Impingement test is normal. Injection of the AC joint is normal." Dr. S is ". . . unable to localize the cause of [claimant's] pain" and refers claimant back to Dr. G.

It appears claimant was next seen by Dr. R on referral from Dr. G. Dr. R in a report dated September 11, 1992, comments on claimant's complaints of right shoulder pain, notes all the test results indicating normal functions and discussed a "right stellate ganglion block." Dr. R noted:

I discussed with this patient at length the risks, goals, benefits etc., behind stellate ganglion blocks and she seemed to understand and wished to proceed. I believe that a stellate ganglion block would be more indicated than a Bier block at this time because of her shoulder symptomatology although her shoulder symptoms could be from a separate problem. We had a long discussion about this.

In an October 12, 1992, progress note, Dr. R indicated he would ". . . try a cervical epidural steroid injection in case her symptomatology is caused by cervical radicular pain." In an October 26, 1992, progress note Dr. R records that the injection has not "greatly helped" claimant and proposed a "second epidural steroid injection today." A December 18, 1992, progress note by Dr. R indicates the injections were of no "lasting benefit" to claimant, that Dr. R does not believe he "can be of any further benefit to [claimant]." Dr. R refers claimant to Dr. PC.

Dr. PC in a report dated January 13, 1993, notes claimant's history involving the warmer door, Dr. G's surgical procedures, Dr. S's "work-up" and indifferent response to stellate ganglion blocks. Claimant's complaints were "primarily of right shoulder area discomfort . . . ." Dr. PC records "[c]ervical range of motion seems normal, <u>without symptomatology</u>." (Emphasis added.) In a follow-up report dated April 13, 1993, Dr. PC stated:

Despite the fact that her MRI was non-diagnostic, she may be better off to have a cervical CT myelogram at this point to clear the air and to make it easier to plan trial stimulator if necessary.

Diagnostic imaging tests conducted on May 14, 1993, provided the following impression:

1.Mild bulges of the paramedian portions of the C3-4, C4-5 and C5-6 posterior disc margins with corresponding degrees of anterior thecal sac effacement. The degree of bulge is greatest at the C5-6 level. There is no evidence of nerve root encroachment by these paramedian bulges which do not extend laterally.

2.There is borderline spinal stenosis at the C5-6 disc level.

Apparently as a result of this report, claimant was sent to Dr. RC on a "second opinion for spinal surgery." Dr. RC in a report dated June 9, 1993, recounts claimant's history, her treatment with Dr. G, Dr. S's evaluation, Dr. R's treatment, and Dr. PC's proposal of an "anterior cervical discectomy and fusion at C-5/6." Dr. RC reviewed claimant's medical history, social history and conducted his own evaluation, concluding:

I agree with [Dr. PC] that this patient has marginal spinal stenosis at C-5/6. However, her symptoms and physical examination indicate that her present symptoms are primarily psychomotor in origin and in my opinion surgery is unlikely to relieve these symptoms. Additionally it is my opinion that the spinal stenosis was not caused by the contusion of her right arm which apparently occurred at work and is not job-related.

In a rebuttal report (dealing with causation) dated September 22, 1993, Dr. PC stated:

In view of any lack of documentation that there were symptoms prior to the incident and clear documentation that symptoms originated at the time of the incident, there seems to me to be a causal affect between the incident mentioned and the patient's current symptoms, to reasonable medical probability. [Emphasis added.]

Carrier points out that this comment is apparently based entirely on a faulty history given by claimant because there was no documentation (clear or otherwise) that symptoms dealing with the cervical spine originated at the time of the incident, or even for months afterward.

A videotape of the food warmer, including how the door operates, was admitted as a carrier's exhibit. The hearing officer had an opportunity to see the food warmer was approximately six feet tall, the door operated much like a standard refrigerator door and the tray identified as the meat tray was about waist high. Claimant testified she is approximately five feet tall and had to reach over her head to remove the tray of

hamburgers on the day in question. Claimant conceded the food warmer door did not have a spring.

Carrier offered, and affidavits were admitted, of a coworker which controverted claimant's version of how the food warmer door could injure claimant's hand and questioned claimant's motive. Another affidavit by claimant's supervisor stated claimant had told her supervisor she had injured her hand working on a vehicle transmission with her boyfriend. Both claimant and her boyfriend categorically denied the allegations claimant had injured her hand at home.

The hearing officer determined that claimant's cervical condition did not result from the compensable wrist injury of (date of injury). Claimant appealed, contending that she had no cervical problems prior to her wrist injury, and that Dr. PC related her cervical problems to her original injury, emphasizing Dr. PC's September 22, 1993, report quoted above.

There are two basic principles which determine this case. First, the claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Secondly, the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the instant case, the hearing officer was well aware of Dr. PC's September 22nd report as well as the other evidence reviewed above. In addition the hearing officer had the opportunity to see the claimant, observe her demeanor and assess the credibility of the evidence. The question of whether the complained of cervical condition is related to the compensable wrist injury is a factual determination within the province of the hearing officer to decide. Claimant, in her testimony, admitted she did not initially, at the time of the injury, complain of neck pain and that she only noticed shoulder and neck pain after the wrist surgery on November 26, 1991. The earliest documented complaints of shoulder or neck problems available to us in the record is the May 8, 1992, report from Dr. S. In view of this time lapse and other evidence in the record recited above, we find that the hearing officer's decision is supported by sufficient evidence.

Claimant in her appeal also states that she feels she "was badgered by carrier's attorney and had the general feeling the outcome of the hearing was predisposed." A careful review of the record indicates that the hearing was conducted with dignity and that the carrier's attorney was respectful of the claimant. There is no indication that the hearing officer was biased or predisposed against the claimant.

Claimant in her summary in the appeal appears to be testifying regarding her condition which was not specifically brought out at the CCH. Carrier correctly states the Appeals Panel is limited in its review to the record developed at the CCH and cannot now consider new testimonial evidence from the claimant. Section 410.203(a). However, claimant is clearly contending, as she did at the CCH, that she did not have the "constant burning pain in her neck and shoulders" before the injury and therefore it must be related to the injury. Perhaps the wording and details are different in the appeal than what was presented at the CCH however, the theory remains the same and we have considered claimant's entire appeal.

As pointed out above, an appellate body will reverse a hearing officer's factual determinations only if those determinations are contrary to the overwhelming weight of the evidence. We do not so find.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge