APPEAL NO. 94151

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 18, 1994, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The sole issue presented for resolution was: "Is the claimant's carpal tunnel syndrome to the left wrist a result of a compensable injury sustained on (date of injury)?" The hearing officer determined that the appellant, claimant herein, did not prove, by a preponderance of the evidence, that he sustained a left carpal tunnel syndrome (CTS) on (date of injury). Claimant contends that the "evidence is clear that both the left and right (CTS) are a result of the (date of injury), on the job injury," and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

There is reference back to an unappealed decision of the hearing officer finding that claimant sustained a right CTS injury in the course and scope of his employment on (date of injury). That decision, and associated medical reports, are in evidence as hearing officer exhibits. The facts from the earlier case, and reiterated to some extent by claimant's testimony in this case, showed that claimant was employed by (employer), employer herein, as a "builder," building running boards for treadmills. On (date of injury), as claimant was lifting a board and turning, he "jammed" his right elbow against a metal motor mount. Claimant testified, and the medical records support, that claimant experienced severe pain, his hands and right side "went numb" and he experienced pain in his neck, shoulder, right arm and hands. Claimant was diagnosed as having bilateral CTS, more severe on the right than on the left. The prior case, which has been completely resolved, dealt only with the right CTS. Claimant, at that time, did not urge that the injury affected his left upper extremity, however subsequently at a benefit review conference on November 24, 1993, claimant alleged that the (date of injury), injury has extended to the left wrist in the form of CTS. Claimant's attorney reiterated, on more than one occasion, that claimant's theory does not involve a repetitive trauma injury and that the left CTS was caused by the discreet trauma on (date of injury).

There is substantial medical evidence in the record, both from the first hearing, and the present case. The following recitation attempts to identify the various health care providers. Claimant was seen in the hospital emergency room (ER) the day of the accident and was subsequently referred to physical therapy. Claimant then saw (Dr. H), a neurologist, who referred claimant to (Dr. T), of the (Center) and (Dr. G) a neurosurgeon. Dr. G referred claimant to (Dr. RD), a neurosurgeon who referred claimant to (Dr. GD), a spinal specialist, who performed the right CTS release, and is apparently the treating doctor. Claimant was also referred to (Dr. Mc), a psychiatrist by Dr. GD.

Dr. H, in a report dated October 31, 1991, diagnosed CTS, emphasizing the right limb. In an October 27, 1992, report Dr. H notes claimant is having "quite a bit of pain in his right arm primarily but some in his left as well." Electrical studies show "prolongation" in "both arms, more on the right than on the left."

Dr. T, in a June 11, 1992 report stated "it is more likely than not that [claimant's] [CTS] has directly resulted from the blow to the elbow area on (date of injury), ..." It is not clear whether Dr. T was referring only to the right or to the bilateral CTS. In a report from the Center (signed by Dr. T) dated February 5, 1992, claimant is recorded as reporting left anterior wrist discomfort "as a moderate level 5." A Center report of March 6, 1992, further reports "bilateral anterior wrist pain with right greater than left."

Dr. G in a November 22, 1991, report stated claimant's EMG to show "bilateral [CTS] with the right being worse than the left." Dr. G notes that although claimant has right CTS he has "a myriad of symptoms which cannot be related to the CTS . . . ." In a July 20, 1992, note to the carrier, Dr. G stated "[i]n my opinion, his [claimant's] [CTS] is not a result of nor is it directly related to his work-related injury to his right elbow."

Dr. RD, in a report dated April 13, 1992, diagnosed CTS. In a July 20, 1992, report, Dr. RD opines that he does not believe claimant's CTS is a result of the work-related injury to his right elbow. Dr. RD referred claimant to Dr. GD. Dr. GD, in a report dated May 18, 1992, recorded the history of injury to the right elbow and "onset of right arm pain." Claimant's main complaint was "bilateral hand and wrist pain, right > left." Dr. GD opined ". . . his present symptoms are work related." Dr. GD in a May 31, 1992, report opined that claimant's "carpal tunnel surgery [to the right] would seem within medical probability" to be work related. In a June 6, 1992, report, Dr. GD recites he has received Dr. H's EMG report and it does ". . . indicate a [CTS] which I feel is compatible with the patients reported injury and symptoms." (We note Dr. GD stated a CTS, but does not specify the right or left.) Dr. GD repeats, in several reports, that he believes claimant's CTS to be work related but does not specify right or left or both. In an October 16, 1992, report Dr. GD refers to "right shoulder and arm pain." Dr. GD is urging CTS surgery, which the hearing officer could infer meant the right. In a February 26, 1993, report, Dr. GD recited Dr. H's diagnoses of "definitive prolongation of both median and motor sensory in both arms, more on the right than the left." Dr. GD in that report, while referencing "right shoulder and upper arm" problems makes no further reference to the left. In an August 26, 1993, report Dr. GD, in commenting on claimant's left CTS stated:

> It is my opinion that the left [CTS] which [claimant] is experiencing is the direct result of the repetitive type work that he was engaged in at the time of his on-the-job injury. Having reviewed his workup to date, I find that it would seem within the realms of medical probability that this diagnosis does correlate with his reported injury.

Although Dr. GD makes reference to the above comment in reports dated October 20, 1993,

and September 13, 1993, he did not explain his reference to a "repetitive type work" which claimant denies. In the October 20th report Dr. GD diagnoses left CTS.

In a report dated March 15, 1993, Dr. Mc, apparently a psychiatrist stated he had reviewed Dr. H's records, and opined that ". . . the totality of the patient's symptomology [sic] is not specifically related to his right median nerve mononeuropathy." No mention is made in this report of the left CTS. We note that claimant's attorney, in the course of reviewing the medical records at the CCH, referred to a March 8, 1993, report from Dr. Mc which touched on causation through hyperextension of the left wrist causing the left CTS. Although both attorneys passingly appear to refer to such a report that report was never offered or admitted into evidence.

The hearing officer, at the CCH, commented on the ambiguities of the various doctors' reports. Carrier argued that claimant may have complained of pain in both wrists after the accident but has not established causation. Claimant's rebuttal was that "all," (or at least some) of the doctors associated bilateral CTS to the original injury and how one gets from an accident to the right elbow to a left CTS "no one but the doctors know."

The hearing officer found that there was "insufficient medical evidence to establish that the Claimant's work related injury on (date of injury), caused or aggravated the [CTS] to his left upper extremity." Claimant in his appeal emphasizes that in his amended notice of injury dated February 19, 1992, he claimed as body parts affected to include, "[h]ands, Arms and body in general." Claimant argues that "there is no doubt" that he notified the employer, carrier, and the Texas Workers' Compensation Commission (Commission) "that he sustained injuries to both hands as a result of the original injury on (date of injury)." Addressing this contention, we would note that alleging an injury in a pleading does not establish causation, or that the injury even occurred. Giving notice of injury is not the same as proving the injury occurred as alleged. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991.

Claimant further cites several of the medical reports which diagnosed either left CTS or bilateral CTS, right worse than left. Claimant specifically cites Dr. GD's May 18th report which indicates a bilateral CTS and later in the report states "I do think his present symptoms are work related . . . ." First of all, it is established case law that the claimant has the burden of showing a causal connection between his injury (left CTS) and the (date of injury) injury to his right elbow. Spillers v. City of Houston, 777 S.W.2d 181 (Tex. App.-Houston [1st Dist.] 1989, writ denied). Merely pointing to isolated statements by a doctor, who offers no corroborating rationale how claimant's left CTS was work related, apparently did not weigh heavily with the hearing officer, who as the trier of fact, is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). While several of the doctors found complaints of pain in the left hand and diagnosed bilateral CTS, it is clear that many of the medical reports dealt with the right elbow in the prior case. The hearing officer's determination that there was insufficient medical evidence to establish that the right elbow injury either caused or aggravated the left CTS is supported by the evidence. No doctor explained how an injury to the right elbow could cause CTS in the left wrist. Dr. GD who

did attempt to explain it said it was due to "repetitive type work" which is completely contrary to claimant's stated theory. Claimant's response at the CCH on how the right elbow injury caused the left CTS was that only the doctors could explain it. Claimant in his appeal stated "[m]edical evidence speaks for itself in this matter." Claimant then simply makes the conclusory statement that "there was indeed a causal link between the original injury and his left [CTS]." As noted above, it is the claimant who has the burden to establish that a causal connection exists between his employment and his injury. *See also* Texas Workers' Compensation Commission Appeal No. 92272, decided August 6, 1992. We believe that the hearing officer's conclusion that claimant has not done so is supported by sufficient evidence.

It is clear there was conflicting medical evidence, much of it coming from the prior hearing dealing with the right arm injury. Where there are ambiguities and conflicts in the medical evidence it is the duty of the hearing officer to resolve conflicts and inconsistencies in the medical evidence and judge the weight to be given to 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*; Burlesmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer obviously believed the medical evidence insufficient to establish a causation between the (date of injury) injury to the right elbow and claimant's complaints regarding his left wrist.

Claimant also contends that he complained of pain in his left upper extremity from the onset of the injury. The hearing officer could well have determined that to be true and it is undisputed that claimant had an accident involving his right elbow. However, an accident does not necessarily equate to an "injury." *See* Jarrett v. Travelers' Insurance Co., 66 S.W.2d 415 (Tex. Civ. App.-Amarillo 1933, writ dism'd by agr.). And, mere pain is not compensable under the workers' compensation statute. National Union Fire Insurance Co. of Pittsburgh, Pennsylvania v. Janes, 687 S.W.2d 822 (Tex. App.-El Paso 1985, writ ref'd n.r.e.). *See also* Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992. The mere fact that claimant had an accident to his right elbow and that he complained of pain in his left wrist does not necessarily mean the pain in the left wrist is compensable.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge