

APPEAL NO. 962641  
FILED JANUARY 29, 1997

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 27, 1996, a contested case hearing (CCH) was held. The issues at the CCH were whether the appellant, who is the claimant, had a cervical injury as part of his original compensable injury of \_\_\_\_\_, and whether the carrier waived its right to contest compensability of that injury.

The hearing officer determined that the carrier had timely disputed the cervical injuries. The hearing officer held that claimant had not proven that his cervical injury was the result of his fall on \_\_\_\_\_.

The claimant appeals, arguing that he was rushed along by the hearing officer and prevented from fully developing the evidence in his case because the hearing officer wanted to get home for Thanksgiving. He argues that the carrier did not timely dispute the neck injury, and that the cervical condition was caused by his original fall. He argues that the hearing officer was biased. The carrier responds that the decision should be affirmed, and that the claimant was not precluded from presenting necessary evidence. The claimant has filed a response to this response.

DECISION

We affirm.

Claimant worked as a bus driver for the school district when he tripped in a ground squirrel hole and landed hard on his right hand on \_\_\_\_\_. Because accepted by the carrier or decided in previous hearing decisions, the undisputed injury to the claimant was his upper right extremity and carpal tunnel syndrome (CTS) in his right wrist. Claimant said that since the accident, and in spite of CTS release surgery, his pain never decreased and if anything had worsened. Claimant testified that the nature of his pain was that it radiated from his hand up to his shoulder. Claimant said his neck had never hurt him and did not hurt to this day. His former doctor, (Dr. R), noted his continuing pain on April 24, 1996, but doubted any cervical rupture because claimant had no neck complaints. However, when claimant failed to improve, he was referred eventually to (Dr. J), who opined that his pains were cervical in nature. Dr. J reviewed EMG testing conducted on claimant in August 1996 and stated that she thought on the EMG, showing widespread denervation, was the report secondary to his injury. She found the fall to be a "very possible explanation," given a history that claimant had no problems prior to his fall. However, Dr. J diagnosed underlying degenerative arthritis that could "possibly" have been aggravated by the fall. Claimant was 59 years old at the time he was treated by Dr. J.

A doctor who reviewed claimant's medical records for the carrier, (Dr. D), noted that the EMG testing was suggestive of brachial plexopathy at C6-C7. Analyzing all of the medical records, including those of Dr. J, he concluded that any brachial plexus injury resulting from the fall would have spontaneously resolved in 10-12 months, and that

claimant had essentially an ongoing degenerative condition not causally related to his fall. Claimant's current treating doctor, (Dr. W), wrote a brief note urging a cervical MRI, and thought his history of right arm pain to be in the nature of cervical radiculopathy, given also the failed CTS surgery.

In November 1994, claimant was examined by a designated doctor, (Dr. P), and certified at maximum medical improvement (MMI) with an 11% impairment rating (IR). Contacted by the Texas Workers' Compensation Commission (Commission) in January 1995, Dr. P discussed the injury as a hyperextended right wrist. He noted that claimant had lower cervical and upper thoracic muscular tension, but no discrete injury was assessed for those regions, and Dr. P observed that this was secondary muscular symptomology. The first doctor to clearly set forth the possibility of a cervical injury was Dr. J, in a June 19, 1996, letter report that accompanied her Initial Medical Report (TWCC-61). The carrier filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) on July 16, 1996, disputing the relationship of the cervical condition to the original fall injury.

During the CCH, the hearing officer indicated that because the preliminary matters leading to the injury had been developed in another CCH over which he had presided (and found favorably the claimant), he would not need much evidence to be redeveloped on those conditions. The claimant was urged and encouraged to submit and detail every medical record which would support his argument that his cervical condition stemmed from his fall in 1993. Both parties were urged to address the issues at hand, and the claimant was allowed to develop evidence even when objected to by the carrier for relevance. The only reference made to Thanksgiving was the observation that if time were not used efficiently by both parties to develop the narrow issues before the hearing officer, all parties could reconvene the next day (Thanksgiving).

First of all, we cannot agree that the hearing officer's actions in focusing the parties' attention on the issues and admonishing them to efficiently use the allotted time, amounted to cutting off the claimant from presentation of all necessary evidence. Everything submitted by the claimant was admitted. Numerous medical records from the carrier are also in evidence. Nor do we agree that the hearing officer's present employment in the private sector, which is not employment by the carrier in this case, amounts to an indication of bias as claimant asserts in his appeal.

An aggravation of a preexisting condition is an injury in its own right. INA of Texas v. Howeth, 755 S.W.2d 534, 537 (Tex. App.-Houston [1st Dist.] 1988, no writ). In Texas Workers' Compensation Commission Appeal No. 93886, decided November 15, 1993, we stated that "aggravation" has a somewhat technical meaning, and that to be compensable, an aggravation "must be a new and distinct injury in its own right with a reasonably identifiable cause . . . ." The mere recurrence or manifestation of symptoms of the original injury does not equate to a compensable new aggravation injury. Rather, as we discussed in Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, a compensable aggravation injury must be proven by evidence of "some enhancement,

acceleration, or worsening of the underlying condition . . . ." While we realize that a trauma has special significance to injured workers as a dramatic life event, it does not follow that every illness or ailment that occurs, or is diagnosed thereafter was necessarily triggered by the trauma.

In this case, there was conflicting medical evidence and it appears that the hearing officer concluded that, except for chronology, there was no relationship demonstrated between the injury and the manifestation of essentially an ordinary disease of life, degenerative spinal arthritis. We note that even Dr. J, who was favorable to a link between the two, notes that it is a "possibility," and her records, although using the word "aggravation," do not indicate how any underlying degenerative condition would have been made worse by the fall, or accelerated from its natural progression. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

On the matter of timely dispute by the carrier, we cannot agree that the hearing officer went against the great weight and preponderance of the evidence by his determination that the first date the carrier was fairly informed of a cervical injury was Dr. J's June 19, 1996, report and that the carrier timely reacted to that report the following month.

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, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge