APPEAL NO. 980068

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On September 3, 1997, a hearing was held. The record was closed on December 15, 1997, after a report from (Dr. R) was received. The hearing officer determined that appellant's (claimant) compensable injury of _____, did not include injury to claimant's wrists and head. Claimant asserts that the injury does extend to the wrists and head and states that medical evidence shows this; he takes exception to the medical opinion of Dr. R. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

The hearing officer did not explain whether the Texas Workers' Compensation Commission (Commission) or the carrier initially requested an examination by Dr. R. He did say in the Statement of Evidence that Dr. R examined claimant at the "Commission's request," adding that Dr. R was instructed to examine the wrists and head. The hearing had closed without any indication that the record would be held open for a period of time or that a medical opinion would be requested. The hearing officer also stated in the Statement of Evidence that Dr. R's examination of claimant occurred on November 4, 1997. On December 3, 1997, the hearing officer wrote to the parties that he received Dr. R's report. The hearing officer stated that both parties could "comment" on Dr. R's report, which was appropriate, but said this only after he had said that "it will be part of the evidence," without stating that there could be any objection to its admission. Claimant submitted comments to the hearing officer dated December 12, 1997, in which he said that Dr. R was "incompetent," but did not object to admission of the document. (It should be noted that when the Commission requests an evaluation from a doctor, it would be very helpful, when the doctor's report is admitted into evidence, to also admit the requesting letter from the Commission to that doctor.)

The determination of the hearing officer that the claimant's injury did not include injuries to his wrists and head is sufficiently supported by the evidence admitted at the hearing without regard to the comments or opinions set forth by Dr. R.

(Dr. P) on _____, provided a history when claimant was brought to the emergency room (ER) of (hospital). The patient was said to have related that while at work "he tripped and slipped on the mud, bending and landing on his right leg and ankle." Dr. P reported x-rays showing two spiral fractures of the tibia and a "small fracture" of the fibula. He also added to the history, "he denies any other injury when he fell . . . he denies any head, neck or back pain." Dr. P's examination of claimant also found "upper extremities without injury."

(Dr. Pe) then performed surgery to fix the fractures on March 3, 1997. Dr. Pe's initial history indicated that claimant had slipped in mud. Dr. Pe's notes continue through April 22, 1997, when he expressed dissatisfaction with the absence of approval for therapy for claimant noting "severe quadriceps atrophy." The Commission approved a request to change the treating doctor from Dr. Pe to (Dr. B) on April 21, 1997. Claimant stated in the request to change that Dr. Pe did not want to address his other problems such as "my left wrist." We note that as of April 22, 1997, when Dr. Pe last saw claimant, no medical record mentioned an injury or complaint involving the head or wrists.

Dr. B on April 24, 1997, recorded claimant's history as involving the fall of _____ with an added reference to claimant striking his back. In first describing the fall, Dr. B did not allude to the hands, but later in the history said that both wrists had been injured in the fall, saying further, "he attempted to catch himself in the fall when he fell backwards and jammed both wrists . . ." Then, three months later, on July 21, 1997, Dr. B mentioned that claimant struck his head when he fell, the back of the head striking the floor. The head injury is described as pain in the occipital area with migraines.

Dr. R did examine claimant, but his opinion as to whether claimant sustained injury to his wrists and head relies on the medical records generated prior to his examination. He referred to Dr. P's history several times and cited Dr. P's "description and evaluation" in saying that it did not appear as if claimant sustained head or wrist injuries at the time of the fall. He also noted that Dr. Pe never referred to complaints other than those related to the leg.

The carrier also submitted medical documents to (Dr. H) to examine. His report indicates that claimant's wrists condition did not stem from the fall of _____.

The claimant testified that when he fell, one leg went up and he put his hands back and hit his hands and head. He said that he first complained of the head and wrists to a physical therapist about two months after the injury. He said that Dr. Pe would not listen to his complaint about the wrists.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In instances when an injury is treated and later a claimant complains of other injuries, the question of whether the additional complaints involve compensable injuries is one of fact for the hearing officer to decide. *See* Texas Workers' Compensation Commission Appeal No. 93086, decided March 17, 1993. In the case under review the hearing officer could give more weight to the history provided at the onset, rather than to opinions generated months later, particularly when not only was the main injury addressed with reference to other injuries, but when claimant was initially said to have denied other injuries and the doctor's examination notes that there were no upper extremity injuries. *See* Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. The hearing officer could consider the initial examination and history to have been

buttressed by the multiple records of Dr. Pe over a period of almost two months that said nothing of any complaint and mentioned no swelling or other indications of injury to any other part of the body. He could consider that Dr. Pe's notes showed that he was concerned about treatment claimant received other than the care he directly gave by Dr. Pe's repeated exhortations to the carrier to provide allied care; the hearing officer could reasonably infer from this that Dr. Pe would note claimant's complaints of injury to other parts of his body from the fall, even if he could not treat them without prior approval. The hearing officer did not have to give more weight to Dr. B's opinions and comments than he did to those of Dr. P, Dr. Pe and Dr. H. *See* Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975) and Charter Oak Fire Ins. Co. v. Levine, 736 S.W.2d 931 (Tex. App.-Beaumont 1987, writ ref'd n.r.e.).

The determination that claimant's fall of _____, did not cause injury to claimant's head and wrists is sufficiently supported by the evidence. If the admission of Dr. R's report was error, it was not reversible error because basically the same medical information was provided by Dr. P, Dr. Pe, and Dr. H. The decision and order are sufficiently supported by the evidence, not including Dr. R's report, and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Christopher L. Rhodes
Appeals Judge