

APPEAL NO. 980069

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 4, 1997. With respect to the sole issue before him, the hearing officer determined that appellant's (claimant) compensable _____, injury did not extend to epicondylitis, carpal tunnel syndrome (CTS) and injury to the cervical/thoracic/lumbar spine (named conditions).

Claimant appeals contending that the medical evidence "conclusively proved" that claimant's injury did extend to the named conditions and that there is "no evidence to the contrary." Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) urges affirmance.

DECISION

Affirmed.

It appears undisputed that claimant sustained a compensable right shoulder injury (eventually diagnosed as a rotator cuff tear) on _____. Claimant demonstrated how the injury occurred and testified that she reported the injury. Claimant was eventually seen by (Dr. K), who saw her one time and referred her to (Dr. Z). Claimant continued to work until September 1996 when she, along with many others, were laid off by the employer. Claimant last saw Dr. Z on September 27, 1996. Claimant received no other medical treatment until she began treating with (Dr. B) on May 29, 1997. Dr. B at that time first diagnosed the named conditions.

Dr. K, in what appears to be a printout of an Initial Medical Report (TWCC-61) dated July 19, 1996, diagnoses a right shoulder strain, gave claimant "a neck owner's manual in Spanish," recommended a liniment rub and prescribed an anti-inflammatory medication. There was no mention of any of the named conditions. Although claimant contends that Dr. Z ordered physical therapy it appears the therapy was ordered by Dr. K. The therapy notes only refer to a right shoulder injury. Claimant was subsequently referred to Dr. Z, who in a printout form Specific and Subsequent Medical Report (TWCC-64) dated September 27, 1996, diagnosed a rotator cuff syndrome. Claimant eventually had shoulder surgery for a partial tear of the rotator cuff, apparently in August 1997.

Dr. B first saw claimant on June 6, 1997, and on a TWCC-64 of that date, diagnosed internal derangement of the right shoulder and for the first time diagnosed "epicondylitis, right elbow" and CTS right. Dr. B refers to a report from (Dr. A), carrier's required medical examination (RME) doctor. In a Report of Medical Evaluation (TWCC-69) and narrative dated June 16, 1997, Dr. A addresses claimant's right shoulder injury, notes Dr. B's acupuncture, and notes claimant's complaints of right shoulder pain. There is no mention

of the named conditions. Carrier apparently posed certain questions to Dr. A in a letter dated July 7, 1997. Dr. A replied in a report dated August 18, 1997, stating that he (Dr. A) had been unable to find any mention of the named conditions in prior medical records, that claimant mentioned only her right shoulder injury and that Dr. A "was unable to find any medical evidence to substantiate a diagnosis of a right elbow epicondylitis or a right [CTS]." Dr. A goes on to say that if claimant does have those conditions, "I was unable to find a causal connection of these injuries and the compensable injury of a tear of the rotator cuff"

Claimant in her appeal contends that the medical evidence "conclusively proved" that claimant's injury extended to the claimed conditions and that "[t]here is no evidence to the contrary." As our recitation of the evidence shows, claimant's contentions are clearly wrong. Dr. A's report and response to carrier is certainly evidence to the contrary that claimant even has the claimed conditions and that even were one to find that she had those conditions there is no evidence of a causal connection to the compensable injury. We note again, only Dr. B diagnoses those named conditions. Neither Dr. K nor Dr. Z reference those conditions and Dr. A affirmatively finds them not to exist.

Whether claimant's claimed conditions are causally related to her compensable injury is a fact question to be resolved by the hearing officer. As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts and inconsistencies in the evidence, including medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of the claimant and could properly decide what weight he would assign to the other evidence before him. Campos. While issues of injury may frequently be established by the testimony of the claimant alone, the hearing officer may accept or reject such testimony in whole or in part (Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.)). Further, it is well settled that the hearing officer is not bound to accept the claimant's testimony at face value; rather, it only raises an issue of fact for a hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In this case only Dr. B diagnoses the claimed conditions, Dr. K, Dr. Z and the physical therapist only reference right shoulder complaints and Dr. A disputes that claimant even has the claimed conditions and in answer to a hypothetical states that even if claimant had the claimed conditions, there is no evidence of a causal connection other than claimant's testimony.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently the decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge