

APPEAL NO. 980071

Following a contested case hearing (CCH) held, on November 10, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by finding that the appellant's (claimant) neck problems of _____, were "not caused by her secretarial duties such as binding, computer work, etc. while in the course and scope of her employment as an executive secretary with her employer," and by concluding that claimant did not sustain a compensable injury in the form of an occupational disease on _____. Claimant has appealed the finding and conclusion and reargues the evidence. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

At the outset, we note that claimant has attached to her appeal a letter from (Dr. K) dated November 13, 1997, addressed to a Texas Workers' Compensation Commission (Commission) ombudsman. The Appeals Panel's review is limited to the record developed at the hearing (Section 410.203(a)) and we have rejected exhibits first tendered on appeal. See *e.g.* Texas Workers' Compensation Commission Appeal No. 92092, decided April 27, 1992, and Texas Workers' Compensation Commission Appeal No. 92156, decided June 1, 1992. Dr. K's letter was not offered or considered at the hearing below. In the letter, Dr. K states that it was written in response to an interrogatory sent through ' (Dr. L) dated October 27, 1997, and that claimant was seen by him on April 24, 1997, on referral from ' (Dr. B) with complaint of work-related discomfort about the right shoulder and neck area. Dr. K further states that claimant stated that she worked as an administrative assistant and spent a good deal of time at a computer and using a telephone; that Dr. K's assessment was that claimant had findings consistent with cervical degenerative disc disease and right shoulder impingement symptoms, and that she was subsequently referred to Dr. L for her shoulder. Dr. K further stated that he felt that repetitive computer and telephone work in the workplace "may in fact produce symptomatic cervical degenerative disc disease, "particularly in ergonomically suboptimal conditions." Dr. K also says he did not obtain or review 1994 x-rays and that the ombudsman is referred to Dr. L with respect to claimant's shoulder. Claimant has not provided us with a basis to consider Dr. K's letter for the first time on appeal and thus it will not be considered.

Claimant testified that she had been employed by the employer for five years; that she worked as an administrative support person for a business that sells franchises; and that her duties are wide ranging and include answering the telephone, typing documents for mailing and shipping, and binding thick documents. With regard to prior workers' compensation claims, claimant indicated that she sustained a right knee injury in 1991 and on (injury date 2), while working for the same employer, sustained injuries to her wrists,

elbows, and upper arms, that the right shoulder continued to bother her, and that she underwent arthroscopic surgery on the shoulder in July 1997. Claimant further stated that on or about _____, she reported to her supervisor, (Mr. D), that she injured her neck and shoulders from the stress of her work, and Mr. D testified similarly.

In evidence was a job description prepared by Mr. D on September 29, 1997, which reflected that 40% of claimant's work was typing, 15% was telephoning clients, 15% was screening calls, 10% was making copies, and 20% was typing letters of intent and legal sales contracts. Claimant acknowledged that she was free to move around in the performance of her varied duties.

Claimant said that she was referred by her family doctor, Dr. B, to Dr. K for her neck symptoms and that Dr. K referred her to Dr. L for her shoulder symptoms. Dr. K's Initial Medical Report (TWCC-61) of May 1, 1997, stated the history as working on the computer and telephone resulting in right shoulder pain, that an MRI scan showed some degenerative disc disease at C5-6 without herniation or foraminal impingement and some tendinitis in the supraspinatus on the right. Dr. K's impression was impingement syndrome right shoulder and cervical degenerative disc disease. Dr. L's May 7, 1997, report stated that claimant had been treated over the past two years for a frozen shoulder and his impression was chronic impingement syndrome. He noted that claimant's neck was stiff and that while her neck motion does not reproduce shoulder symptoms, her shoulder motion does reproduce neck pain and he felt that while she does have mild cervical radiculopathy, her primary symptoms are coming from her subacromial tendinitis and supraspinatus tendinitis. Dr. L wrote on May 12, 1997, that he felt that claimant's impingement syndrome has been caused from her initial on-the-job problem and is related to the adhesive capsulitis that she had previously. Dr. L wrote on July 22, 1997, that claimant continues to have shoulder and interscapular pain and also pain that goes up to her neck. He said he thought that both her neck and shoulder pain are related to her on-the-job injury. A July 23, 1997, report stated that a cervical spine MRI revealed a broad based bulge at C5-6 without nerve root impingement. Dr. L's operative report of July 29, 1997, reflected that he performed right shoulder surgery on that date and claimant said this surgery was taken care of under her prior claim. On July 30, 1997, Dr. L wrote that claimant reported that "90% of her neck pain is gone just in the short time after surgery." On July 31, 1997, Dr. L wrote that claimant said that all of her neck pain was gone.

The October 23, 1997, report of (Dr. C), who examined claimant on that date, noted her history of developing upper extremity pain at work in 1994 after excessive typing on a computer, claimant's recent right shoulder surgery, and the cervical spine MRI report showing a small bulge at C5-6. Dr. C opined that "her cervical is not related to her injury of 1995 and would not be due to working on a computer." His diagnosis was "adhesive capsulitis right shoulder, secondary to impingement syndrome and surgery, improving."

(Dr. R) testified that he reviewed claimant's medical records, that the records show no definitive determination of pathology other than cervical degenerative disc disease,

which he termed an ordinary disease of life, and that in his opinion the records do not reflect that claimant's work caused her claimed neck injury. He interpreted Dr. L's records as stating Dr. L's opinion that claimant's neck pain was referred from her shoulder.

Claimant had the burden to prove by a preponderance of the evidence that she sustained an occupational disease injury on _____, as she claimed. Even though claimant stated on her claim form that her injury was to both shoulders, it appeared that she was contending that the new injury was to her cervical spine in that her right shoulder was still being treated under her previous claim. Her contention was that her injury was caused by the repetitious nature of her duties and she emphasized the binding of thick documents. The testimony from Mr. D, no longer employed by the employer, and the employer's human resources manager, (Ms. M), was in conflict concerning the average amount of such binding by claimant in a month's time. However, the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, is to resolve the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing body, we will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider the lack of evidence as to the number of repetitive motions claimant made daily and how those motions affected her neck and the neck pain relief shortly after the July 1997 shoulder surgery. The hearing officer could also credit the opinions of Dr. C and Dr. R.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge