

APPEAL NO. 980273  
FILED MARCH 30, 1998

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 January 21, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With regard to the issues at the CCH, she determined that the appellant's (claimant) \_\_\_\_\_, compensable injury does not extend to her cervical area, that the respondent (carrier) did not waive its right to contest whether the claimant's injury extends to the cervical area and that the November 16, 1993, Benefit Review Conference Agreement (TWCC-24) does not resolve the issue of whether the claimant's injury extends to the cervical area. The claimant appeals, seeks a reversal of the decision and argues it is contrary to the evidence. The carrier does not respond.

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt her rendition of the facts. We discuss only those facts necessary to our decision. The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified at the CCH that she injured both her hands, both her feet, her right arm, her left leg, her neck and her body generally when she fell while working on a piece of oil field equipment.

The claimant testified that she sought treatment with Dr. C and Dr. B in December 1992, but their records were not introduced into the record. According to the medical reports in evidence, her early treatment related primarily to her right hand and wrist. On March 8, 1993, her initial choice of treating doctor, Dr. KP, performed a right carpal tunnel release surgery. In an October 6, 1993, Initial Medical Report (TWCC-61), her treating doctor, Dr. R, diagnosed a cervical sprain and excused her from work. On March 4, 1994, the carrier-requested required medical examination (RME) doctor, Dr. PE, opined that she did not sustain a "significant" neck injury on \_\_\_\_\_. On August 18, 1994, the Texas Workers' Compensation Commission (Commission)-requested required medical examination (RME) doctor, Dr. PO, stated that she had a "degenerative disc disease about the cervical spine with a superimposed traumatic event as the precipitating episode . . . ." On June 2, 1995, the Commission-selected designated doctor, Dr. O, evaluated the claimant, including her neck, and certified that she reached maximum medical improvement, with a 25% impairment rating.

The hearing officer, in the "Statement of the Evidence" portion of the decision, noted several conditions and events affecting the claimed injury, including the degenerative changes in the claimant's cervical area, a September 1993 episode wherein her husband intentionally inflicted a head injury on her and a February 27,

1995, slip-and-fall injury at a pet store. According to a Texas Peace Officer's Accident report in the record, the claimant also sustained an injury in a May 3, 1993, motor vehicle accident. The carrier introduced a copy of the transcript of Dr. R's September 17, 1996, oral deposition, in an action against the pet store, wherein he testified that the claimant's February 27, 1995, injury exacerbated her ongoing cervical condition. Dr. R also testified that, out of the claimant's dorsal, cervical and lumbar spine conditions after February 27, 1995, the cervical spine condition was "the overriding problem." The carrier showed, through its cross-examination of the claimant, that she did not divulge many of her prior and subsequent injuries and conditions to her doctors.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993. The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the extent of injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer determined that the carrier first received written notice that the claimant's compensable injury extended to her cervical area, on October 6, 1993, when it received Dr. R's TWCC-61 and contested whether the compensable injury extends to her cervical area on October 18, 1993, when it filed its Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21). A carrier must contest compensability of an injury on or before the 60th day after it is notified of the injury or else it waives its right to contest compensability and is liable for payment of benefits. Section 409.021(c), Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(b) (Rule 124.6(b)). The analysis to determine whether a carrier has timely contested compensability is essentially a two step process. In the first step, the hearing officer must determine when the carrier was notified of the injury. In the second step, the hearing officer must determine if the carrier contested compensability on or before the 60th day after it received written notice. A carrier must timely contest compensability of additional injuries. Texas Workers' Compensation Commission Appeal No. 950183, decided March 22, 1995.

The claimant does not dispute that the carrier first received notice that her compensable injury extends to her cervical area on October 6, 1993. She argues that the carrier's October 18, 1993, TWCC-21 did not sufficiently dispute whether her compensable injury extends to her "cervical area" because it only contested whether her compensable injury extends to her "neck." The hearing officer comments that the TWCC-21 "must be read as a whole and if a fair reading of a dispute can be reasonably be [sic] understood to get out the basis for denying the claim it is sufficient," citing Texas Workers' Compensation Commission Appeal No. 970562, decided May 7, 1997. Whether a TWCC-21 is a sufficient contest of compensability is often a question of fact.

We conclude that the hearing officer's determinations that language regarding whether the compensable injury extends to the neck is sufficient to contest whether it extends to the cervical area and that the carrier did not waive its right to contest whether the compensable injury extends to the cervical area are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

A dispute may be resolved by agreement, in whole or in part, at a benefit review conference. Section 410.029; Rule 147.4(c). A signed TWCC-24 is binding on a carrier. Section 410.030(a); Rule 147.4(d)(1). One of the disputed issues listed on the November 16, 1993, TWCC-24 was:

Is injury to cervical spine causally related to the job injury?

The resolution of that issue, as listed on the TWCC-24, was:

Claimant agrees to RME with [Dr. KE] for opinion on whether cervical spine injury is related. Carrier agrees to pay travel associated with RME.

The claimant testified that she was examined by Dr. KE but his report is not in the record. The hearing officer found that the TWCC-24, while addressing the issue of whether the claimant's cervical injury was related to her \_\_\_\_\_, compensable injury, did not resolve the issue. Our review of the agreement lends support to the hearing officer's decision that the TWCC-24, although containing a "resolution," does not resolve the disputed issue. Therefore, we conclude that the hearing officer's determination on the TWCC-24 issue is not in error.

The decision is not against the great weight and preponderance of the evidence and, therefore, we affirm.

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Christopher L. Rhodes  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge