

APPEAL NO. 980310
FILED MARCH 31, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On January 22, 1998, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not sustain a compensable left shoulder injury on or about _____, and therefore had no disability. Claimant asserts that she did sustain a compensable left shoulder injury, referring to her prior left shoulder injury and stating that the decision rendered has stopped medical benefits for her prior injury. She also states that the medical evidence does support an aggravation injury. Respondent (carrier) replies that the claimant did not sustain a compensable aggravation injury in [1997] and that the decision should be affirmed.

DECISION

We affirm, as modified.

Claimant agreed with carrier at the inception of this hearing that the first issue was, "did the claimant sustain a compensable left shoulder injury on _____?" As part of that discussion, carrier represented that it was not disputing that claimant had a left shoulder injury prior to [1997]. In addition, the hearing officer made a finding of fact that said, "claimant's symptoms on or about _____, were a recurrence of symptoms inherent in the etiology of a preexisting condition that had not resolved and was not an aggravation or new injury."

The conclusion of law and statement in the decision set forth at the end of the hearing officer's opinion that address an injury appear to be a main focus of claimant's appeal. These merely recited that claimant "did not sustain a compensable left shoulder injury." As stated, the issue was whether a compensable injury was sustained on _____, so if the evidence is found to be sufficient to support the finding of fact quoted previously, then the decision found at the conclusion of the hearing officer's opinion will be modified to state that claimant did not sustain a left shoulder injury on or about _____.

Claimant worked for (employer) as a sewing machine operator for a number of years. She testified that she had an injury prior to the alleged one in [1997]. At one point, she said the prior injury occurred in 1996, then she said the injury "started in '95." A report of maximum medical improvement (MMI) assigned a four percent impairment rating (IR) in 1996; it considered the left shoulder and left wrist in assigning the four percent IR; however, it certified MMI was reached on August 2, 1996, but the date of injury was referred to as "[claimant] sustained a work related injury on (alleged 1996 injury)." The only other date given was "4-19-96" as the date claimant began treatment in a certain clinic. A statement by Ms. M, a personnel clerk, indicated that claimant's

problem began with a ganglion cyst in 1994. Ms. Me, a supervisor, also provided a statement in which she said that the ganglion cyst problem began in 1995 "more or less." Mr. K identified himself as the plant manager in a statement. He said that his records show claimant had a date of injury of (alleged 1996 injury) for a shoulder injury, indicating that she fell down then; but in a later page of his statement, Mr. K said that there was never a report which indicated claimant had hurt her shoulder at a particular time. The facts developed in this record do not make the date of a prior shoulder injury clear, but appear to indicate a shoulder injury in 1994; records in evidence do show that claimant was assessed an IR, based on a left shoulder injury, in 1996.

In regard to the question of whether claimant sustained an injury to her left shoulder in 1997, Ms. Me also said in her statement that nothing new happened to claimant at the beginning of 1997. Claimant testified that her left shoulder "starting hurting again" in [1997]. When she saw Dr. G at this time, she said he told her she had an impingement, and she indicated that he had previously said she had tendinitis. She added that the date of _____ was when she reported it; she put that date in because a date was needed. She added that when she saw her doctor, he "told me to say that I had injured myself pulling on a bundle." She added that she would not do that, saying that she "started feeling the pain stronger and stronger."

Ms. Me testified that claimant did not tell her that she injured herself in [1997], but that claimant said Dr. G told her to report an injury "because the time had already run out and that they needed a new claim." Ms. M also testified and said that claimant never said she sustained a new shoulder injury in 1997.

While claimant had mentioned "impingement" as being found in 1997 by Dr. G, the medical records of Dr. G show that in April 1996 he noted a left shoulder impingement, as he also did in May and June 1996, and in his report of MMI in August of 1996. After [1997], Dr. G does, in March 1997, say that claimant "has taken a turn for the worse" and said that she is "more symptomatic now," adding that her repetitive work "made the impingement syndrome much more clinically evident." Dr. G began to consider surgery. In addition, Dr. O, a physician claimant saw in Mexico, who saw claimant in May 1997, said that claimant appeared to have aggravated her "pain and discomfort in the left shoulder" through her repetitive movements. Also, an independent medical examination doctor, Dr. Z, in September 1997, said that claimant had not reached MMI in regard to her left shoulder. Thereafter, in November 1997, in answer to an inquiry from the benefit review officer of the Texas Workers' Compensation Commission (Commission), Dr. Z wrote that claimant's "complaints were all related to her injury of _____ and should be considered as such."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. In Texas Workers' Compensation Commission Appeal No. 950125, decided March 10, 1995, a finding of a new injury based on a medical opinion of an "aggravation" was reversed when the claimant had been continuously treated for a past injury in the same area and there was no new incident that resulted in an

aggravation injury. While the facts developed in this case appear to show an allegation of repetitive physical trauma as the basis for a new injury in 1997, those facts, including the same diagnosis, continued treatment, "increased symptoms" reported in 1997, and little medical development as to an aggravation injury resulting from repetitious physical trauma, provide sufficient evidence to support the determination that claimant did not sustain an injury on _____.

With no compensable injury there can be no disability under the 1989 Act. See Section 401.011(16).

Since the evidence sufficiently supported the finding of fact that there was no compensable injury on _____, the conclusion of law and Decision, at the end of the hearing officer's opinion, are hereby modified to read that claimant did not sustain a compensable left shoulder injury on or about _____.

Finding that the decision and order, as modified, are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge