

APPEAL NO. 990053

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 23, 1998, a hearing was held. She (hearing officer) determined that the respondent's (claimant) compensable left elbow injury of _____, also included his head, neck (cervical spine), left shoulder, and thoracic spine. Disability was also found to have begun on March 13, 1998, and continued to the date of the hearing. She also determined that the appellant (carrier) did not timely contest compensability of the above injuries. Carrier asserts that there is no evidence as to when it received written notice of the added injuries, that the medical evidence does not support the determination that claimant's injuries extended beyond his left elbow, and that the medical evidence does not support the determination of disability. Claimant replied that the decision should be affirmed.

DECISION

We affirm in part and reverse and render in part.

Claimant worked for (employer) on _____. He testified that on that date, while riding in the passenger seat of a garbage truck, the truck turned onto its side when negotiating a ramp at a freeway. Claimant stated that the driver weighed at least 260 pounds and was not wearing a seat belt; claimant's side of the truck struck the ground with the right side of claimant's head striking the door, and the driver struck claimant. Claimant was extracted from the vehicle and taken to an emergency room (ER); at the ER, a note states that claimant complained of pain in his left arm and neck; another said that he complained of pain to his left side. He was noted to have multiple contusions. X-ray studies were made of several locations on the body; we agree with carrier that it is possible to obtain studies after such an accident to determine the extent of injury and, just because an x-ray is taken of a particular body part, that does not mandate a finding of fact that such body part was injured. Other parts of the ER records from the date of the incident indicate that claimant received a "blow to head" and reported pain in the neck and left shoulder. Although a blank is checked which says "no evidence of trauma" to the head, a diagram of a head shows a mark on the right upper side of the head. When claimant saw Dr. C on January 5, 1998, Dr. C noted "no significant head injury" and treated the left elbow. Dr. C saw him once more in January and referred him to Dr. M.

Dr. M first saw claimant on January 9, 1998. He treated claimant's left elbow, stating that was his "present chief complaint." In February 1998 Dr. M reported that the elbow had improved and said nothing of any other condition, although claimant testified that he told Dr. M of his neck, left shoulder, and back. Claimant agreed that he received some therapy for his elbow during this time. Dr. M then reported in early March that claimant had increased left elbow "discomfort" since returning to work.

Claimant then saw Dr. K, D.C., on March 16, 1998, who noted elbow, left shoulder and neck pain. He also referred to the upper back. On April 16, 1998, Dr. K diagnosed

elbow sprain/strain and cervical muscle spasms along with cervical syndrome. Dr. K also stated in October 1998 that claimant "remains" off work and said that claimant had injured his left elbow, mid thoracic area, cervical area, and left shoulder; he also described claimant as having "constant headaches since the injury."

Carrier stressed the absence of reference to other injuries by Dr. M and said that a doctor the Texas Workers' Compensation Commission (Commission) sent claimant to see, Dr. W, found that the injury "did not extend to the cervical spine and shoulder." It added that the ER records and Dr. K do not show an "injury" to the head. It further added that the ER records and Dr. K's records regarding injury to other areas are against the great weight of other evidence. We note that Dr. M did note that the elbow was claimant's "present chief complaint."

Dr. W saw claimant on August 31, 1998. His report does not say that the injury did not extend to the cervical spine and shoulder. On the contrary, it said that his "Impression" was "(1) history of cervical strain. (2) left shoulder strain. (3) left elbow strain." In answer to a question addressing "current conditions," not whether claimant sustained certain injuries in the _____, accident, Dr. W said "if this patient had a significant injury on _____, the lag period to the chiropractic exam of two and one-half plus months, would not be reasonable" (Emphasis added.) (We note that Section 401.011(26) defines "injury" and Section 406.031 states that a carrier is liable for compensation for an employee's "injury"; no reference was found to a carrier only being liable for significant injury.) Dr. W then wrote a letter in October to the carrier in which he stated in effect that the left shoulder was injured, but added that "I see nothing" about a "lower back, thoracic spine, or head injury."

A designated doctor, Dr. H, D.C., in June 1998 found that claimant was not at maximum medical improvement and considered the cervical and thoracic spine, left upper extremity, and head in reaching that conclusion.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. In instances in which there is a logical sequence of events, such as is present here, where a serious accident occurs and a claimant is taken promptly for medical care, the hearing officer could consider medical statements that only said injury could result from the trauma. See Insurance Company of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969). In this case, the hearing officer considered a statement from Dr. K that said more than that. In addition, she had two statements from a Commission-selected doctor, Dr. W, from which she could assign weight as she considered proper. See Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997, which said that the hearing officer is the judge of medical evidence. Even taking the two statements together, Dr. W indicated that there was a left shoulder injury; he once found a "history of cervical strain" and then said that the cervical spine symptoms were not documented for three months, but he did not discount a cervical injury.

A fact finder may reasonably infer from a statement such as that by Dr. C which said claimant had "no significant head injury," that the claimant did have some head injury. She

could also consider claimant's testimony about his headaches and the statement of Dr. K about claimant's headaches, along with the ER record that indicated claimant sustained a blow to the head and had a mark of some type on the upper right side of the skull. The evidence from the ER records, from claimant, from Dr. K, and from Dr. W sufficiently support that claimant sustained a left shoulder injury and a cervical injury. In addition, the evidence from the ER records, from claimant, from Dr. C, and from Dr. K sufficiently support that claimant sustained a head injury. Finally, the evidence from claimant and Dr. K sufficiently support the determination that claimant has a thoracic spine injury. While this case does not involve circumstances in which a claimant makes no reference to a particular body part for several months while another injury is being treated, even questions of injury in that instance are factual questions which the hearing officer is to decide. See Texas Workers' Compensation Commission Appeal No. 93086, decided March 17, 1993.

The carrier asserts that the evidence does not support a finding that it did not timely dispute compensability of the injuries in dispute. The carrier is correct. The determination that carrier did not timely dispute the compensability of the added injuries is reversed and a new determination is rendered that carrier disputed within 60 days of the dates it showed on its Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) forms. In so ruling we agree with carrier that there is no evidence to show when the statement of claimant was transcribed (the transcript in evidence contains no evidence of the date of its transcription or any other date except the date the statement was recorded); the determination that carrier had written notice on the same date that the statement was recorded, January 14, 1998, is not supported by sufficient evidence. See Texas Workers' Compensation Commission Appeal No. 941398, decided December 1, 1994. There was no other finding of fact indicating any other receipt of written notice by the carrier prior to dates it asserted as its receipt of notice, so no determination as to an untimely dispute may be affirmed.

The claimant's testimony along with Dr. K's statement taking him off work on March 16, 1998, and Dr. K's later statement in October stating that claimant "remains off work" sufficiently support the determination that disability was incurred from March 13 through November 23, 1998, the date of the hearing.

Finding that the decision and order in regard to the extent of injury and disability are sufficiently supported by the evidence, we affirm that part of the decision. Insofar as the decision and order say that carrier did not contest compensability on or before the 60th day, the decision is reversed; the evidence did not show that carrier did not dispute untimely. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge