APPEAL NO. 990085

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 16, 1998. The hearing officer determined that the respondent (claimant) sustained a compensable bilateral carpal tunnel syndrome (CTS) injury on _____; that she had surgery for that injury in April 1997; that after the CTS surgeries, the claimant continued to experience problems with her left shoulder and neck; that the claimant had complained of the neck and shoulder pain before her carpal tunnel releases, but those symptoms had been believed to be attributable to the bilateral CTS; that the claimant's work duties required her to cradle a telephone on her shoulder while typing on a computer and those activities resulted in repetitive trauma to her cervical spine; that the claimant's compensable injury with a date of injury of _____, is a producing cause of her cervical spine injury; that the carrier timely contested the compensability of cervical spine injury; and that the claimant timely filed a claim. The appellant (carrier) appealed, contending that at work the claimant was not encountering hazards that were beyond those encountered by the general public and that her cervical condition is an ordinary disease of life, urging that the evidence is not sufficient to support the determinations that the claimant injured her cervical spine in the course and scope of her employment and that she timely filed a claim, and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that the compensable injury with a date of injury of _____, is not a producing cause of the claimant's cervical spine problems. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that she used a computer and the telephone a lot at work; that she did not have a headset; that a lot of the time she clamped the telephone between her shoulder and ear; that her hands hurt; that her shoulder, neck, and head always hurt; that she went to Dr. O, her family doctor; that Dr. O did not ask if she was having problems with her neck and that she did not tell him that she was having problems with her neck; that Dr. O referred her to Dr. C; that she was diagnosed with bilateral CTS and had surgery on both wrists in April 1997; that she returned to work the first Monday in June 1997 and worked with pain; that Dr. C said that he had done all that he could do for her; that she went to Dr. G in August 1997; that Dr. G requested an MRI of her neck; that she worked with pain until she was fired on June 3, 1998; that an MRI was performed in July 1998; and that Dr. G showed her the MRI report and told her that her condition could be treated with therapy or surgery. The claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated October 11, 1997, in which she stated that her arm and wrist were injured from repetitive wrist movement processing payments.

Dr. C performed a right carpal tunnel release on April 16, 1997, and a left carpal tunnel release on April 30, 1997. In a report dated May 27, 1997, Dr. C reported that the claimant continued to have neck pain, that it may be a double crush phenomenon that may get better with time, that she will be sent to occupational therapy, and that he may refer her to a neurosurgeon. Dr. G saw the claimant on August 11, 1997, and reported that she may have a double crush syndrome with cervical nerve root entrapment and cervical radiculopathy. In a letter to the carrier dated August 21, 1997, Dr. G stated that he and the other doctors feel that her neck is actually the source of her hand pain and that all are in agreement it is "most likely work related on the basis of repetitive motion causing accelerated degeneration/cervical disc herniation." On September 29, 1997, Dr. C stated that he believed that the claimant's neck problem was a work-related cumulative trauma disorder. A report of an MRI dated July 21, 1998, contains the following conclusions:

1. Posterior spondylosis C5 and C6 with mild spinal stenosis noted at these levels. In addition, there is uncal spurring with bilateral foraminal stenosis at C5-C6 and right sided foraminal stenosis at C6-C7.

2. Fair amount of degenerative changes in the C4-C5 disc as described.

In a letter dated October 20, 1998, Dr. G stated that the claimant underwent an MRI on July 20, 1998; that she has significant spondylosis at C5-6 and C6-7; that he feels that the problems in her cervical spine were caused by her injury of _____; and that it is the cause of her continued arm and hand pain.

At the request of the carrier, Dr. W reviewed the records of the claimant and examined her on December 19, 1997. In a letter to the carrier dated December 22, 1997, he stated that a February 1997 note stated that there was no neck pain and no history of a neck injury, that he did not think that a new injury had been sustained since February 1997 to cause the problem, and that he did not think that her work was the cause of her neck problem. In a letter dated January 7, 1998, Dr. W said that he agreed that the claimant should have an MRI but that it was not a workers' compensation problem.

Sections 409.003 and 409.004 provide that a claimant must file a claim for compensation with the Texas Workers' Compensation Commission within one year of the date of the injury and that failure to do so relieves the employer and the carrier of liability. The claimant filed a claim within one year of the date of her injury. The carrier investigated the claimed neck injury, timely disputed the compensability of the claimed neck injury, obtained letters from Dr. W stating that the claimed injury was not work relate, and was not hampered in investigation of the claimed neck injury. The claimant contended that her repetitive trauma injury with a date of injury of _____, included injury to her neck. The carrier has not presented any authority for its argument that the claimant was required to file another claim contending that her injury included her neck after she had filed the claim for her CTS injury.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The carrier contended that the claimant was not exposed to activities that the general public is not exposed to. The claimant testified that she used a computer and clamped the telephone between her shoulder and ear a lot during her work. The evidence does not indicate that the general public does that during much of the day. The appealed hearing officer's determinations that the claimant injured her neck in the course and scope of her employment and that she timely filed a claim are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Alan C. Ernst
Appeals Judge