

APPEAL NO. 990394

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 26, 1999, a contested case hearing was held. At issue in this case are two different injuries on two different dates to different body parts of the same claimant. The issues were the extent of injury of each of the injuries. The hearing officer determined that appellant's (claimant) compensable left and right hand injuries of _____ (all dates are 1998) did not extend to his left wrist, right wrist, left and right elbow, bilateral carpal tunnel syndrome (CTS), left upper thoracic paraspinal area, right and left shoulders and shoulder blades and cervical spine and that claimant's compensable right ankle injury of (subsequent date of injury) did not extend to include a right leg and right knee injury.

Claimant appeals, contending that the mechanisms of both compensable injuries establish that claimant sustained greater injuries than those accepted by the respondent (carrier). Claimant contends that "even a layperson" can determine that claimant's claimed injuries were directly caused by the compensable incidents. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier responds, urging affirmance, citing evidence and testimony that support its position on the disputed issues.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable right and left hand injury on _____. Claimant testified that he was helping carry a very heavy steel door or beam (with two other coworkers) when one corner "got loose" and "both hands got hit by the . . . metal" and "the piece of metal came up and fell down and that's when it hit me really hard." Claimant said his "whole body hurt that instant" and both arms "were numb." Claimant reported the injury and was taken to Dr. AG. Dr. AG was identified as "the company doctor," but apparently has a private practice in a medical clinic. In a report of the _____ visit, Dr. AG recites that claimant "was found to have a right wrist contusion as well as fracture of the proximal phalanx of the left second finger." Claimant was referred to Dr. B, an orthopedic specialist, and released to light duty. An Initial Medical Report (TWCC-61) of a _____ visit indicated that Dr. B diagnosed a fracture of the second metacarpal of the left hand, treated the fracture without manipulation and splinted the fracture. In a Specific and Subsequent Medical Report (TWCC-64) of a March 6th visit Dr. B notes that radiographs taken on February 23rd "were negative for fracture. [Claimant] still had mild tenderness over the left second metacarpal. It was felt he had resolving crush injury to the hand." The splint was removed and claimant was released to regular duty. A May 1st TWCC-64 shows claimant to have "excellent grip strength" and that his crush injury

had resolved. In a report dated May 28th, Dr. AG notes the history and treatment of claimant's hands, and notes a diagnosis of bilateral hand contusion with right forearm and elbow pain. Dr. AG recommended claimant be evaluated by an orthopedic physician. In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated June 1st, claimant wrote in Spanish that his injury was to his hands and elbows. In an Employee's Request to Change Treating Doctors (TWCC-53) dated June 2nd, claimant changed treating doctors from Dr. B to Dr. JG, a chiropractor. The request was approved on June 8th. In a report dated June 17th, Dr. JG recites a history of claimant's "injuring his right and left wrist and hands." Dr. JG's diagnosis at that time was inflammation of the hand bilaterally, "segmental dysfunction upper extremity, paresthesia, possible second metacarpal fracture" (no hand given) and possible CTS. Daily ultrasound, and some 12 types of therapy, were prescribed for the first two weeks, then three times a week from weeks three through eight. In subsequent reports, Dr. JG lists claimant's injuries as bilateral CTS, inflammation of the hand and forearm, paresthesia and segmental dysfunction of the upper extremities. In a report dated October 5th, Dr. B commented on claimant's treatment and Dr. JG's assessment, stating:

Radiograph study reveals an MRI report of the right and left wrist from 6-29-98 are reviewed. These are essentially negative.

* * * *

DISCUSSION: When the patient first presented to my office on _____ he filled out a patient information sheet and reported only the left hand injury as his presenting problem. In addition, in the history taken in my office by one of my assistance [sic], the patient gave no mention of any pain anywhere else other than the left hand. He subsequently went on to resolve his crush injury to his left hand without complication. I am puzzled as to the subsequent onset of bilateral upper extremity pain as well as the suggestion of [CTS]. I can find no evidence of any causal relationship between the injury of _____ and any of these subsequent complaints.

Claimant was subsequently examined by Dr. T, a Texas Workers' Compensation Commission-appointed designated doctor. In a report dated November 4th, Dr. T recited the medical history and performed tests on all claimed injured body parts. Dr. T's orthopedic testing of claimant's wrists, elbows and shoulders were normal. Dr. T assessed a zero percent impairment rating (IR), remarking:

However, due to the failure of the validity tests, voluntary restrictions, and the over-reaction and disproportionate verbalizations, facial expressions and pain behavior, the range of motion impairments of the bilateral upper extremities have been determined to be **invalid**. In fact, when reviewing the work sheets on this patient, the right side appeared to have more of an impairment than the left side which was the injured area. [Emphasis in the original.]

As earlier indicated, claimant returned to work, either light or regular duty, one or two days after _____. On (subsequent date of injury), claimant was working on a platform 18 to 20 feet high when he fell from the platform. Claimant was using a safety harness, which only allowed him to fall about six feet. Claimant testified that he fell almost to the ground and that his right ankle and leg hit a pile of scrap metal that was on the ground. (The employer's safety director, Mr. B agreed that there was some scrap metal on the ground but that it was no higher than two or three feet.) Mr. B testified that reinactments would indicate that claimant's ankle hit a portion of the platform that also fell as claimant was falling and that claimant never touched the ground or the scrap metal. Claimant was again taken to Dr. AG, who in a report dated (subsequent date of injury) noted complaints of right ankle pain. Claimant was diagnosed with an ankle sprain. Dr. AG saw claimant again on April 28th, noted persistent right ankle pain and swelling and referred claimant for an MRI of the right ankle. Claimant was subsequently referred to Dr. W. In a TWCC-61 of a May 6th visit, Dr. W noted x-rays of the ankle were normal but that the MRI showed a tear of the posterior tibial tendon. Dr. W scheduled surgery for June 11th and in a TWCC-64 of that date notes that claimant had called on June 10th and canceled the surgery and advised Dr. W that since Dr. W had not taken claimant off work, he was changing treating doctors. Dr. W noted that claimant had been working "without great deal of difficulty" and "gave no indication that he couldn't do his job." In a TWCC-41 dated June 1st, claimant, in Spanish, only claimed a right foot injury. In a TWCC-53 claimant changed treating doctors from Dr. W to Dr. JG. The change was approved on June 8th.

In a report dated June 10th, Dr. JG notes a history of "injuring his right ankle" but diagnosed "ankle subluxation," "ankle sprain/strain posterior tibialis muscle [sic] tear grade III," "segmental dysfunction [sic] lower extremities," and "inflammation and stiffness of the ankle." Claimant was referred to Dr. S for surgery. In a new patient information sheet, "right foot" is listed as the body part injured. Surgery to repair the torn tendon was performed on June 30th. Subsequent follow-up reports from Dr. S do not refer to any right knee or leg injury. In a report dated October 13th, Dr. S comments on claimant's _____ hand injury, stating that claimant apparently has bilateral CTS and recommends that claimant "see a neurologist for confirmatory electrical studies." Dr. JS evaluated claimant for an IR of the right ankle. In a Report of Medical Evaluation (TWCC-69) dated December 4th, Dr. JS assessed a 10% IR but noted "a tendency toward symptom magnification," that claimant's complaints are "far in excess of the structural pathology" and that claimant's pain avoidance "makes efforts on testing suboptimal."

The hearing officer determined that the preponderance of the evidence involving the _____ injury does not extend to anything beyond the left and right hands and that the (subsequent date of injury) injury does not extend to the right leg and right knee. Claimant's appeal disagrees with the hearing officer's findings, citing his testimony. The appeal states the mechanism (of the _____ hand) injury "was demonstrated by the

claimant" and that "by and through his demonstration and testimony, even a layperson can visualize the mechanism of injury." We have often noted that Section 410.165(a) makes the hearing officer the sole judge of the weight and credibility of the evidence. This is especially true in a case such as this where the hearing officer was able to see claimant, observe his demeanor, gestures and demonstration of the mechanics of the injury, whereas we are limited in our review to the record before us and are unable to visualize claimant's demonstrations.

Claimant also attacks the credibility of Dr. AG and Dr. B by implying they were carrier oriented in their treatment of claimant. Dr. AG was identified as a company doctor and, on both occasions when he saw claimant, referred claimant out to different specialists, Dr. B and Dr. W. In any event, the weight to be given to those opinions was strictly with the hearing officer. Similarly, how the (subsequent date of injury) injury actually happened, what hit claimant's ankle/foot, was a matter for the hearing officer to resolve. The Appeals Panel has held that, generally, an injury issue can be established on the basis of the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant is not determinative, it only raises an issue of fact for the hearing officer to resolve. Burelsmith v. Liberty Mutual Fire Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence under Section 410.165(a). A review of the hearing officer's decision demonstrates that she gave more weight to the reports and opinions of Dr. AG, Dr. B, Dr. W, Dr. T and Dr. JS than to that of Dr. JG and Dr. S. The hearing officer was acting within her province as the fact finder in resolving the inconsistencies and conflicts in the evidence between what some of the documents and reports stated and claimant's explanations. Our review of the record does not demonstrate that the hearing officer's injury determination is 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). Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge