APPEAL NO. 990623

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 982893, decided January 26, 1999. In Appeal No. 982893, we remanded the case to the hearing officer because of the concern that he had improperly required expert evidence to prove the causal connection between the appellant's (claimant) alleged cervical repetitive trauma injury and her employment. The hearing officer, did not hold a hearing on remand. He determined that the claimant's "cervical condition is not a result of the compensable injury sustained on _____." In her appeal, the claimant argues that that determination is against the great weight and preponderance of the evidence. The claimant also forwarded a medical report to the Appeals Panel asserting that it was "newly discovered medical evidence." In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

Initially, we note that we will not consider the "new" evidence forwarded to the Appeals Panel, specifically, a March 22, 1999, medical report from Dr. S. The claimant did not present any evidence to suggest why a medical report from another doctor, who examined her and provided an opinion as to the causation of her cervical condition, could not, through the exercise of reasonable diligence, have been obtained earlier. In the absence of such a showing, we will limit our review to the record as it was developed at the hearing. Section 410.203.

The facts in this case are largely undisputed. At the time of her injury, the claimant had been employed with the self-insured for over 18 years. She held various positions, but each one required her to use one or more computers. The self-insured accepted a repetitive trauma, carpal tunnel syndrome (CTS), claim, with a date of injury of _____.

The claimant began treating with Dr. E on _____. In treatment notes of that date, Dr. E noted that the claimant had numbness and tingling in her hands and "pain that radiates into her shoulder and neck areas." Dr. E stated, "[i]t is my impression that this lady, due to the fact of the kind of work she does with poor ergonomics is causing her thoracic outlet and most likely [CTS] on both of her hands." The claimant continued to treat with Dr. E, whose diagnosis of CTS and thoracic outlet syndrome remained unchanged.

On June 23, 1997, Dr. G examined the claimant at the request of the self-insured. In his report, Dr. G states that the claimant sustained a repetitive use injury to her upper extremities. He continued:

There is no evidence of any neck or shoulder injury that would be sustained with operating a keyboard, in my professional opinion. There is no evidence of cervical radiculopathy at this time.

Dr. T examined the claimant as a Texas Workers' Compensation Commission (Commission)-required medical examination doctor to consider whether the claimant's thoracic outlet syndrome was related to the compensable injury. Dr. T noted that the claimant had complaints of pain in her back, both shoulders, and down both arms. Dr. T concluded that her examination of the claimant did not reveal evidence of thoracic outlet syndrome; however, Dr. T further noted that she "wonder[s] about the possibility of a fibromyalgia type disorder."

On June 29, 1998, the parties executed a benefit dispute agreement, where they agreed that the "claimant's compensable injury does not include a brachial plexus (thoracic outlet) injury." (Emphasis in original.) On July 10, 1998, Dr. G examined the claimant a second time for the self-insured. Dr. G stated that the claimant had sustained a repetitive trauma injury to her upper extremities and further noted a possible diagnosis of fibromyalgia. Dr. G opined that the claimant reached maximum medical improvement (MMI) on June 22, 1997, with an impairment rating (IR) of zero percent.

On August 13, 1998, the claimant began treating with Dr. N, who noted complaints of severe pain and numbness in the claimant's wrists and hands and neck pain, which radiates into the posterior aspect of her shoulders. The claimant filed under her group health benefits for Dr. N's treatment. She explained that she filed under her group health because the self-insured had been consistently denying treatment for anything other than CTS. In addition, there is evidence in the record suggesting that Dr. N would not treat a workers' compensation patient. Dr. N ordered a cervical MRI, which revealed spondylosis and a small central disc herniation at C5-6 and a mild bulge and spondylosis at C6-7. In his report of September 10, 1998, Dr. N discussed the MRI findings and noted that the claimant has "bilateral C6-C7 radicular symptoms probably related to a small herniated disc at C5-C6."

On August 17, 1998, Dr. B, who was selected by the Commission to serve as the designated doctor, examined the claimant. Dr. B noted that the claimant's cervical range of motion was reduced approximately 50% in all directions. Dr. B certified that the claimant reached MMI on June 22, 1997, with an IR of zero percent. He noted that the claimant might have a herniated cervical disc; however, he opined that it was unrelated to her compensable repetitive trauma injury. Specifically, Dr. B stated:

> It is possible that she has a disc herniation in her cervical spine that is causing some of her symptoms. This is not a repetitive stress injury, and therefore, would not be compensable.

The hearing officer determined that the claimant's compensable injury did not extend to a cervical injury. That question presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). As such, it was his responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. A review of the hearing officer's decision demonstrates that he simply was not persuaded that

the evidence presented by the claimant was sufficient to sustain her burden of proving the causal connection between her repetitive work activities and her cervical injury. He was acting within his province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge