APPEAL NO. 990718

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 8, 1999. The issue at the CCH was whether the appellant, who is the claimant, sustained an injury to her cervical area and incurred right carpal tunnel syndrome (CTS), in addition to the compensable shoulder injuries sustained on _____. The hearing officer determined that the claimant did not sustain a cervical and CTS injury on the date in question.

The claimant has appealed. She attaches to her appeal some exhibits (medical records) that were considered at the benefit review conference but not presented at the CCH. She argues medical evidence she believes supports her contention of the extent of her injury to her neck and CTS. The carrier responds that evidence submitted for the first time on appeal cannot be considered. The carrier notes the time lag between the injury and the first reports of neck and CTS symptoms. The carrier asks that the decision be affirmed.

DECISION

Affirmed.

The claimant worked as a special education teacher for (a self-insured political subdivision that shall be referred to as either employer or carrier, depending upon the context of the reference). As she was taking her students outside for recess on _____, she tripped on a crack in the sidewalk and fell forward, landing on her hands and then on her side. She said that another teacher helped her up and she went to the nurse's station, where her abrasions were cleaned up. The claimant said she continued to work but when the pain in her shoulders did not go away, she sought medical treatment two weeks later from her usual doctor. Because the injury was a workers' compensation injury that her doctor did not handle, she was referred to Dr. N. The claimant said she did not realize at the time that Dr. N only handled shoulders and knees. The claimant said she complained about arm pain every time she saw Dr. N. She said that her neck did not have pain so she would not have complained about this.

The claimant had rotator cuff surgery on May 8, 1997, leaving work before this surgery on April 28th. She had another shoulder surgery in early July 1997. The claimant said she returned to work in August 1997 and continued working until sometime in January 1998.

Dr. N's medical records of April 22, 1997, note claimant's considerable shoulder pain. He found a normal neurological examination. He scheduled an MRI for both shoulders. His letterhead indicates that he is an orthopedic specialist. He continued after her surgeries to treat her in follow-up. He found on September 29, 1997, that claimant had some weakness and pain on her left side. Dr. N performed an impairment rating (IR)

examination on January 26, 1998, and determined that she had an 11% IR. The claimant maintained she had no idea what an IR was and so agreed with it. It was not until sometime in March 1998, when she began receiving impairment income benefits checks, that she went back and read certified mail correspondence that was sent to her regarding this IR. Dr. N also certified that she reached maximum medical improvement on January 26, 1998.

The claimant said that Dr. N would tell her that her hand pain was due to arthritis, which is one reason she did not question the 11% IR. However, on May 5, 1998, at the referral of Dr. K, EMG testing for continuing weakness found neuropathy and an MRI of the cervical and lumbar areas was recommended. The claimant said an MRI had been requested previously but denied by the carrier, until she was also admitted to the hospital for emergency cervical surgery which, she testified, was done on May 12, 1998, by Dr. B. (There are no medical records pertinent to this surgery in evidence aside from a reference to the surgery in another report.) Dr. K's notes relative to the EMG testing indicated that he felt claimant had peripheral neuropathy consistent with her diabetes. It appears that a recommendation for MRI of the cervical area was made sometime in December 1998 to reevaluate a cord compression. A letter from Dr. L dated September 25, 1998, noted that claimant had a cervical diskectomy at C3-4 because of a herniated cervical disc. He noted a high probability that her fall onto her outstretched hands was the cause of traumatic CTS. Dr. L did not state an opinion regarding the cervical problem. However, a letter from Dr. B dated September 10th said that it was his opinion that, in all medical probability, her cervical complaints and progression thereof resulted from her fall. His first report and that of a carrier doctor note that claimant had a "remote" history of neck and back surgery.

We have considered only the evidence produced in the record at the CCH and cannot consider new evidence on appeal. The Appeals Panel's consideration is restricted only to the record as developed at the CCH. *See* Sections 410.164(a) and 410.202.

Whether claimant injured her neck and incurred traumatic CTS on the date she fell was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). Chronology alone does not establish the causal link of later manifested injuries to an earlier accident. Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994. While the lack of any mention of a condition in early records does not rule out a connection, the

passage of time between accident and alleged follow-on injuries is a fact for the hearing officer to weigh. We cannot agree that the hearing officer overlooked evidence, or that her decision is against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The Appeals Panel will not fact find in the hearing officer's place or substitute its own judgment where, as here, the evidence supports the decision that could be found, notwithstanding that contrary inferences could be drawn. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Judy L. Stephens
Appeals Judge