APPEAL NO. 990924

A contested case hearing was held on March 16, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with the hearing officer to resolve the sole disputed issue, to wit: "Is the injury to the C6-C7 nerve root sheath bilaterally a result of the (incorrect date of injury), compensable injury or proper and necessary medical treatment thereof?" The hearing officer concluded that the appellant's (claimant) compensable injury of (incorrect date of injury), does not extend to or include any cervical injury. Claimant has appealed this conclusion and several underlying findings of fact for insufficiency of the evidence, arguing, as she did below, that her compensable low back injury of _____, extends to and includes her neck injury because her cervical spine was injured on (subsequent date of injury), while undergoing chiropractic treatment for her low back injury. The respondent (carrier) urges in response that the evidence is sufficient to support the appealed findings and conclusion.

DECISION

Affirmed.

Not appealed is a finding that claimant was injured in the course and scope of her employment on _____. Claimant testified that on that date, while employed by (employer) in (city 1), she injured her low back lifting a box of printer paper off a shelf; that she subsequently moved away from city and changed treating doctors to Dr. R at the (the institute); that Dr. R referred claimant to Dr. G, a chiropractor at the institute, who treated her low back with manipulations while she laid on a "drop table"; that on or about (subsequent date of injury), Dr. G had her get off the drop table and stand up; and that he then put his arms under her arms and his hands around her neck and "twisted and popped" her neck and she felt pain. She said she yelled and asked Dr. G what he was doing and that he responded that he was aligning her spine. Claimant's husband testified that he was present during that treatment by Dr. G, that he "heard it pop plumb clear across the room," and that claimant "hollered" and said, "that hurts." Claimant denied prior neck problems but did say she had previously had muscle spasms in her upper back and shoulders area for which she obtained relief from a myofascial release. She said that if Dr. R's records indicate that she told Dr. R of prior neck problems, Dr. R's records are in error. Claimant further stated that subsequent to Dr. G's treatment, she changed treating doctors to Dr. B; and that after he saw the results of a myelogram and CT scans, he told her she had ruptured discs in her neck and back and asked her which operation she wanted first, her neck or her back.

Dr. R's April 6, 1998, report reflects that claimant's chief complaint was "neck and low back pain," that her upper back or neck pain is "4/100" and the things that make her discomfort worse for her neck are bending the neck forward or backward. Dr. R's June 11, 1998, report states that claimant reported a severe exacerbation of pain, especially in the neck region, and bilateral shoulder pain and that she had exquisite tenderness on compression of the C7 spinous process which seemed reproducible. Dr. R further reported

that cervical spine x-rays were obtained and showed some degenerative changes and osteoarthritic changes, mild in nature. Dr. R's follow-up notes of June 29 and July 2, 1998, made no mention of claimant's neck.

Dr. G's record of claimant's (subsequent date of injury), follow-up visit mentions tenderness at the L2-5 levels, that side posture manipulation was performed, makes no mention of claimant's neck, and states that Dr. G will discontinue chiropractic care at the end of the following week. A handwritten note on the record in evidence, acknowledged by claimant to be hers, states: "On this day - possibly my neck injury." Dr. G's May 28, 1998, record states that claimant complained of neck and low back pain and that exam revealed tenderness in the upper thoracic spine at the T1-2 level. Dr. G's June 18 and June 25, 1998, reports mention claimant's complaints of pain in the C7-T1 region radiating across both shoulders. Dr. G reported on July 9, 1998, that claimant stated that the low back pain causes so much tension that it increases the spasm in her neck and shoulders. Dr. G reported on August 4, 1998, that claimant complained of low back pain, upper back pain, and muscle spasm in the neck and shoulders.

Dr. B's initial report of August 21, 1998, stated that claimant reported that after one of her manipulation treatments at the institute a few months ago she developed neck pain. Dr. B's diagnosis includes acute cervical strain and states that claimant appears to have strained her neck during manipulation therapy offered as treatment for her work-related condition. Dr. B's September 24, 1998, EMG report states that the study is abnormal in showing a chronic C7 root lesion and that the findings are of "long standing." Dr. B wrote on November 30, 1998, that claimant has a history of cervical and lumbar spondylosis.

Dr. H reported that on October 28, 1998, he examined claimant, then 60, for the carrier; that the September 15, 1998, myelogram was a normal thoracic myelogram; and that the myelogram showed a minimal effacement of the C6-7 nerve root sheath bilaterally with no significant spondylosis and an unremarkable cervical cord with no central narrowing identified. He also said that the post-myelogram CT scan of the cervical spine was within normal limits and that electrodiagnostic testing on September 17, 1998, demonstrated a chronic C7 nerve root lesion on the right, findings of "long standing."

Dr. S reported to Dr. B on November 6, 1998, that a CT myelogram demonstrates a disc bulge at the C6-7 level with some impingement on the spinal cord, that her neck problems developed after chiropractic treatment of her low back, and that he feels she should still be covered by workers' compensation for this injury. On March 5, 1999, Dr. S wrote Dr. B, stating that claimant's cervical spine surgery was not approved, that there is some dispute as to whether she in fact has a disc bulge at C6-7, that he agrees the findings are "subtle," and that he believes a cervical spine MRI scan should be obtained.

Challenged by claimant are findings that the injury of _____, does not extend to or include any injury to her neck; that she complained of neck problems to Dr. R on April 6, 1998; that she did not sustain a cervical injury on (subsequent date of injury), at

the hands of Dr G; that there is no causal relationship between her alleged neck injury and her compensable low back injury of _____; and that there is no persuasive, credible, objective medical evidence that she has a cervical injury.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. The hearing officer indicated in his discussion of the evidence that he noted that claimant complained of neck pain to Dr. R on April 6, 1998, and that he was not persuaded that claimant even had a neck injury, as such, let alone that her neck was injured by Dr. G on (subsequent date of injury), while he was treating her low back.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge