

APPEAL NO. 990987

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 April 15, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable left shoulder injury on _____. The issue before the hearing officer was, is the compensable injury a producing cause of the claimant's left shoulder impingement syndrome. The hearing officer made the following findings of fact and conclusion of law and entered the following order:

FINDINGS OF FACT

2. The Claimant experienced chronic and severe symptoms from her compensable injury from _____, through April 12, 1997.
3. On August 20, 1998, the Claimant suffered a severe exacerbation of her left shoulder symptoms.
4. The evidence is insufficient to establish that the work related incident on August 20, 1998, is the sole cause of the Claimant's incapacity and or need for medical treatment after that day.

CONCLUSION OF LAW

1. The compensable injury on _____, is a producing cause of the Claimant's left shoulder impingement syndrome and the subsequent need for additional medical treatment.

ORDER

The Carrier is ordered to pay benefits in accordance with this decision, the [1989 Act], and Commission [Texas Workers' Compensation Commission] Rules.

The carrier appealed those findings of fact, the conclusion of law, and the order; urged that the medical evidence established that the claimant suffered a new injury and that her present problems were not produced by her 1992 injury; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's _____, injury is not the producing cause of the left shoulder impingement syndrome. A response from the claimant has not been received.

DECISION

We reform the Decision and Order of the hearing officer by entering a decision that resolves the disputed issue and we affirm the added decision and the order of the hearing officer.

The claimant testified that on _____, she slipped and fell on her left side; that she was treated by Dr. M, a chiropractor; that Dr. M referred her to Dr. D, a spine specialist; that she had burning and weakness in her left arm and no feeling in her little and ring finger of her left hand; that Dr. G performed a cervical laminectomy on November 4, 1994; that she did not notice any improvement; that in January or February 1997, Dr. D sent her to physical therapy (PT); that after two weeks of PT she noticed improvement and the numbness in her fingers was almost gone; that she received PT three times a week for six weeks; that she performed 20 minutes of PT a day at home; and that she continues to perform the PT at home. She stated that in April 1997 she returned to work for another employer; that she greeted people as they entered a lakeside development; that the work was light and she had no difficulty performing the work; that at about noon on August 20, 1998, she was eating lunch, was seated in a chair with rollers, put her hand on a doorknob and pulled herself to the door to get up to greet visitors; that she had a sharp pain in her left shoulder; that she went to Dr. M about 20 minutes after the incident; that he put her arm in a sling and prescribed ice treatment; that she returned to work and worked the remainder of the day; and that she got an appointment with Dr. D and saw him about a week later. The claimant said that Dr. D examined her and said that she had a tear, that nothing could be done for her except surgery, and that she had reinjured herself.

In a report dated March 30, 1993, Dr. D noted that all provocative tests for impingement, rotator cuff tears, instability, AC joint pathology, bicipital tendinitis, and labral pathology were normal and diagnosed cervical radiculopathy. Dr. D reported that a March 1993 CT scan showed moderate-sized herniations at C5-6 and C6-7. The claimant had cervical surgery and continued to receive treatment for her neck. A report from Dr. D dated February 21, 1997, indicates that the claimant complained of left-sided numbness and a pop in her left shoulder and numbness after lifting her arm above her head. Although not all reports from the physical therapist are in the record, apparently the claimant received PT that greatly helped her. On March 19, 1997, Dr. D said that the claimant was essentially asymptomatic, her numbness was removed, she was back to her previous baseline, and had continued evidence of pain at T3-4 and some slight shoulder region pain. In an office visit note dated June 25, 1997, Dr. D wrote:

IMPRESSION: Shoulder impingement syndrome, bursitis/tendinitis likely secondary to the original injury as a mechanical situation versus this being part of the original injury not previously addressed to any great extent.

In September 1997, the claimant was discharged from PT. On August 31, 1998, Dr. D stated that the claimant stretched her shoulder and felt a crunch and pain, said that she had a positive impingement sign, and prescribed medication and PT. In a letter dated October 2, 1998, Dr. D wrote:

I saw [claimant] on August 31, 1998 for recurrent pain in her shoulder. It was of the same etiology that she was previously found to suffer from that she had from her original injury, being impingement syndrome that previously resolved with [PT]. This is a recurrence of her prior problem, although she has done very well for an extended period of time. This is a separate life event that irritated her preexisting problem, which is from her original worker's comp injury being impingement syndrome of the shoulder.

Please feel appropriate to reconsider your decision for [PT] and treatment of this recurrence of her old worker's compensation problem, as there is no new injury appreciated on my examination of the patient.

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 issue, 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The order of the hearing officer states that the carrier is ordered to pay benefits "in accordance with this decision," but the Decision and Order does not contain a decision. From the conclusion of the law that the claimant's compensable injury sustained on _____, is a producing cause of her left shoulder impingement syndrome and the need for subsequent medical treatment after that day, we infer a decision that the claimant's compensable injury sustained on _____, is a producing cause of the claimant's left shoulder impingement syndrome and enter such a decision. The issue of reasonable and necessary medical treatment was not before the hearing officer. We affirm the added decision and the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge