

APPEAL NO. 990993

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 April 13, 1999. Issues contained in two separate docket numbers were consolidated for consideration at this CCH. In one case, the hearing officer determined that the compensable bilateral carpal tunnel syndrome (BCTS) injury sustained by the appellant (claimant) on (date of injury for docket no. 1), does not extend to an injury to the neck and shoulders. In the other case, the hearing officer determined that the claimant did not sustain a compensable injury on (date of injury for docket no. 2). The claimant appeals these determinations, asserting he sustained a repetitive trauma injury to his neck and shoulders. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The hearing officer made the following findings of fact:

FINDINGS OF FACT

2. Claimant has degenerative changes in both shoulders and bone spurring in his neck consistent with degenerative changes.
3. Claimant has an osteophyte formation which may be causing an impingement in the right shoulder.
4. The osteophyte formation in Claimant's right shoulder and degenerative changes in his neck and shoulders were not created as the result of a specific traumatic event on (date of injury for docket no. 2), but rather are the result of an ordinary disease of life which developed over a period of time prior to (date of injury for docket no. 2).
5. Claimant did not sustain an injury to his neck and shoulders in the course and scope of his employment on (date of injury for docket no. 1).
6. Claimant did not sustain an injury to his neck and shoulders in the course and scope of employment on (date of injury for docket no. 2).

CONCLUSIONS OF LAW

3. The compensable injury sustained by Claimant on (date of injury for docket no. 1), does not extend to an injury to the neck and shoulders.
4. Claimant did not sustain a compensable injury on (date of injury for docket no. 2).

The claimant appeals, specifically indicating his disagreement with Findings of Fact Nos. 4 and 5 and Conclusion of Law No. 4. The self-insured's response points out that the claimant did not appeal Finding of Fact No. 6 or Conclusion of Law No. 3 and asserts both have become final and are not subject to review. Although the claimant did not specifically enumerate in his appeal Finding of Fact No. 6 or Conclusion of Law No. 3, we note that the claimant's appeal indicates disagreement with Finding of Fact No. 5 which supports Conclusion of Law No. 3, and Conclusion of Law No. 4 which is factually supported by Finding of Fact No. 6. We find the claimant's appeal sufficient to have disputed Findings of Fact Nos. 4, 5, and 6 and Conclusions of Law Nos. 3 and 4, and they are the subject of our review.

The parties stipulated that the claimant sustained a compensable injury on (date of injury for docket no. 1). The claimant testified that the injury was BCTS, caused by repetitive drilling and wrench work as an aircraft assembler. The claimant received medical treatment for the BCTS injury from Dr. P. The claimant testified he had a right carpal tunnel release on April 1, 1997, and was off work through May 2, 1997, and had a left carpal tunnel release on June 24, 1997, and was off work through August 11, 1997. The claimant testified that he changed treating doctors to Dr. B and the evidence indicates the Texas Workers' Compensation Commission approved this change on August 27, 1997.

The claimant testified that he sustained an injury on (date of injury for docket no. 2), to his neck and shoulders. The claimant stated that he was lifting a tool weighing approximately 65 pounds and felt burning in his neck. According to the claimant, prior to (date of injury for docket no. 2), he did not have pain or a muscle pull in his neck but just numbness in his arms. On cross-examination the claimant testified that it was his position that the (date of injury for docket no. 1), claim extends only to BCTS, not the neck or shoulders. Dr. B indicated in a letter dated November 3, 1997, that the claimant's (date of injury for docket no. 1), date of injury was to the claimant's right/left wrists, not the neck, and the diagnosis was BCTS and cervicalbrachial syndrome. Dr. B also stated:

On (date of injury for docket no. 2), the claimant suffered a specific injury to his neck, midback and right/left shoulders. While moving extremely heavy tools off the table to the assembly line he felt extreme pain in the upper body torso.

There are two different mechanisms of the way the injuries happened and different areas of the body were affected.

Dr. B referred the claimant to Dr. T. In a report dated December 23, 1997, Dr. T diagnosed the claimant as having acromioclavicular joint arthritis of the right shoulder with spur, impingement syndrome of the right shoulder, and tendinitis of the supraspinatus of the left shoulder. The claimant presented the testimony of Dr. M, who works in the same facility as Dr. B. Dr. M testified that, after reviewing the medical records of the claimant, the claimant's diagnosed (date of injury for docket no. 2), injury is consistent with the mechanism of injury as alleged by the claimant.

The self-insured asserted that the claimant did not sustain any damage or harm to the physical structure of his body on (date of injury for docket no. 2). The carrier presented the testimony of Dr. S, who reviewed the x-ray report of August 25, 1997, and MRI films of November 18, 1997, of the claimant's neck and shoulders. Dr. S's opinion was that the claimant's right shoulder indicated an osteophyte formation, which could cause an impingement, but it was unlikely. Dr. S's opinion was that the left shoulder had minimal degenerative changes and the cervical spine had some bone spurring which was also degenerative.

The claimant had the burden to prove that the compensable injury sustained by the claimant extended to the neck and shoulders, and that he injured himself as claimed on (date of injury for docket no. 2). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so 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. 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).

The claimant's theory of recovery at the CCH was that he had a specific incident on (date of injury for docket no. 2), which caused an injury to his shoulders and neck. The claimant, on appeal, is apparently claiming a repetitive trauma injury. Section 401.011(26) defines injury as damage or harm to the physical structure of the body and includes occupational disease which in turn is defined in Section 401.011(34) and includes repetitive trauma injury. We would note, as discussed above, that the hearing officer is the trier of fact. The hearing officer made findings of fact and conclusions of law based on a specific discrete injury theory rather than an occupational disease and the Appeals Panel can only consider the record developed at the CCH. See Texas Workers' Compensation Commission Appeal No. 93169, decided April 12, 1993. Consequently, we will review the record for sufficiency of the evidence based on allegations of a specific incident occurring on (date of injury for docket no. 2).

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer found the evidence insufficient to support a specific traumatic event on (date of injury for docket no. 2), which injured the

claimant's shoulders and neck and did not find Dr. B's records and Dr. M's testimony persuasive. As was the claimant's position at the CCH, the hearing officer found that the claimant did not sustain an injury to his neck and shoulders on (date of injury for docket no. 1). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the compensable injury sustained on (date of injury for docket no. 1), does not extend to an injury to the neck and shoulders, and the claimant did not sustain a compensable injury on (date of injury for docket no. 2).

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge