

APPEAL NO. 991048

On April 28, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). With regard to the issue at the CCH, the hearing officer decided that appellant (claimant) did not sustain a compensable injury to her neck in addition to the injury to her hands on \_\_\_\_\_, or at any other relevant time. Claimant requests that the hearing officer's decision be reversed and a decision rendered in her favor. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

Carrier stated at the CCH that it has accepted a repetitive trauma injury to claimant's hands, wrists, and elbows. Claimant claims that she also sustained a repetitive trauma injury to her neck. "Repetitive trauma injury" means "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36).

Claimant testified that she began working as a customer service representative for the employer in May 1995, that her job required her to constantly take telephone calls and type information received on a computer keyboard, that she took about 120 telephone calls a day, that she used a telephone headset, that 95% of her eight-hour work day was spent typing on the keyboard, that she had to constantly refer to thick reference manuals that were on high shelves at her wall unit, that she had to look up to see which manual she needed, that she had to reach up with her arms and upper body to get the manuals, that she constantly looked up and down when referring to notes that were taped on her wall unit, that paperwork was also on each side of her desk, that her computer terminal was at about eye level, and that her symptoms with her wrists and neck happened only at work.

Claimant said that she last worked on April 24, 1998, and that she initially sought treatment for her injury on or about \_\_\_\_\_. Claimant treated with Dr. V, D.C. from May to August 1998 and Dr. V's records reflect complaints of bilateral upper extremity problems and neck pain. An MRI of each wrist was done. Dr. V diagnosed claimant as having carpal tunnel syndrome (CTS) and a closed dislocation of a wrist. Claimant said Dr. V told her that he could not treat her neck until he got approval from carrier to do so.

Claimant was examined by Dr. K, an orthopedic hand surgeon, at carrier's request on October 6, 1998, and Dr. K reported that claimant reached maximum medical improvement (MMI) on that date with a zero percent impairment rating (IR). Dr. K diagnosed claimant as having a work-related cumulative trauma disorder to her bilateral upper extremities but stated that "her neck does not appear to be involved" and that her neck movements were supple and did not appear to be restricted.

Claimant changed treating doctors to Dr. S, D.C. in September 1998. A cervical MRI was done on October 14, 1998, and the radiologist reported that it showed a disc bulge at C5-6, with disc material effacing the thecal sac; a disc protrusion at C3-4, with an acute partial thickness tear through the posterior central fibers of the annulus fibrosis; and loss of normal cervical lordosis likely related to paraspinous muscle spasm. On October 21, 1998, Dr. S diagnosed claimant as having cervical disc herniation, brachial radiculitis, and CTS.

Dr. S referred claimant to Dr. D, D.C., and Dr. D reported that claimant reached MMI on November 2, 1998, with a five percent IR. Dr. D assigned impairment for a specific disorder of the cervical spine and for upper extremity motor dysfunction. Dr. D had noted in September 1998 that an EMG was normal without evidence of myopathy, plexopathy, or cervical radiculopathy.

In a report dated November 12, 1998, Dr. W, D.C., noted that he was the designated doctor and that he examined claimant on that date. Dr. W gave a clinical impression of right CTS and bilateral traumatic tenosynovitis of the wrists and reported that claimant reached MMI on November 12, 1998, with a 10 % IR. Dr. W assigned impairment for abnormal wrist range of motion and for a right median nerve injury. Dr. W wrote that "[t]he cervical MRI examination does reveal two disc abnormalities, but I do not believe they are attributable to this injury."

Dr. S wrote in February 1999 that repetitive trauma to the wrists and neck are reasonably associated with someone doing repetitive typing on a keyboard and that there is a causal relationship between claimant's wrist problem and her neck problem.

Dr. H, D.C., is associated with Dr. S and has treated claimant. Dr. H testified that he first saw claimant in August 1998; that claimant complained of hand, wrist, arm, and neck pain; that he diagnosed claimant as having cervical brachial syndrome, a possible disc herniation, CTS, and a dislocated wrist; that the cervical MRI revealed a disc bulge/protrusion at C5-6 and C3-4, with a tear; that he understood that claimant's computer terminal was below eye level; that constant flexing of the neck downwards while using a computer caused claimant's neck problems; and that claimant's neck condition was caused by her work activities.

Claimant had the burden to prove the extent of her compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. The hearing officer found that the claimant had not proved by a preponderance of the evidence that she sustained a neck injury due to performing her job duties for her employer and concluded that claimant did not sustain a compensable injury to her neck in addition to the injuries to her hands. It is not disputed by carrier that claimant has cervical disc bulges/protrusions as shown on the MRI. However, there is conflicting evidence as to whether claimant sustained an injury to her neck due to her work activities. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a).

As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness.

Contrary to claimant's assertion, the hearing officer's decision reflects that the hearing officer did consider the opinions of Drs. H and S in arriving at his decision, but did not find them persuasive regarding the cause of claimant's neck condition. The weight and credibility to be given to those opinions, and to the other medical opinions in evidence, as well as claimant's testimony, was for the hearing officer to determine. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge