

APPEAL NO. 991061

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 14, 1999. With regard to the only issue before him, the hearing officer determined that respondent's (claimant) compensable (head and neck) injury of _____, extends to her upper chest (sternal sprain/strain) and a right shoulder sprain/strain.

The self-insured school district, referred to as carrier or self-insured, as appropriate, appeals, contending that there is insufficient evidence to support a sprain/strain to the chest or an injury to the right shoulder. Carrier points to evidence which tends to support its position, requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from claimant.

DECISION

Affirmed.

Claimant testified that she was a teacher's assistant at one of the self-insured's special education schools, and that on _____, while sitting on a step with a special education student in front of her, she was attempting to restrain that student. The extent of the restraint and the injury is in dispute. Claimant testified that the student was striking her in both the chest and head with her head and when the student jerked loose, claimant was knocked backwards, hitting her head. The self-insured points out that the early medical histories do not include a chest or right shoulder injury and that claimant's only injury was to her head and neck when she fell, or was knocked backward. The self-insured has accepted liability for a head and neck injury. Claimant demonstrated to the hearing officer how the injury occurred.

Claimant testified that she "blacked out" briefly and that the doctors that she initially saw were concerned with treating her head injury. The hearing officer comments, in his discussion, "that the medical documents initially dealt mainly with the head injury." In a consultation report dated January 2, 1998, Dr. W mentions weakness and numbness in claimant's right leg and right arm and hand. In a neurological exam dated February 25, 1998, Dr. D, D.C., notes pinpoint tenderness at the "right AC joint and to some degree the pectoralis major and minor. . . ." Claimant had been referred to physical therapy and a pain diagram dated February 24, 1998, at the rehabilitation clinic shows complaints of chest pain in the sternum. A progress note of February 26, 1998, indicates "pain on center of chest"; a March 6, 1998, note indicates lots of pain in the right arm and "[right] upper rib pain." A progress note dated March 16, 1998, indicates complaints of "a lot of pain coming from upper chest and R shldr radiating down arm." Claimant's current treating doctor, Dr. H, D.C., testified that claimant has a chest strain/sprain which was caused by the compensable incident.

The self-insured contended, at the CCH and on appeal, that the histories recited by the various doctors are inconsistent and make no mention of the student's head repeatedly or violently striking claimant in the chest; that Dr. W's report only notes weakness and numbness in the right hand and arm which does not necessarily suggest a right shoulder injury but might suggest a head or neck injury. The hearing officer, in his discussion, comments:

Based on all the evidence, including the Claimant's testimony as to how the injuries were sustained, I find sufficient evidence that the Claimant did sustain an injury in the form of a sprain/strain to her chest wall, and strain/sprain to her right shoulder.

The evidence was in conflict and subject to differing interpretations. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge