

## APPEAL NO. 991107

This appeal arises 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 22, 1999. She (hearing officer) determined that the compensable injury of the appellant (claimant) did not extend to her thoracic and cervical area. Claimant appeals this determination on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We affirm.

Claimant contends the hearing officer erred in determining that her compensable injury did not extend to the thoracic and cervical spine. Under the 1989 Act, the claimant had the burden of proving that she sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. Existence and extent of injury are fact questions for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996. The hearing officer is the sole judge of the weight and credibility to be given to the evidence and the relevance and materiality to assign to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts 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 hearing officer may believe all, none, or any part of any witness's testimony and may properly decide what weight she should assign to the evidence before her. Campos. We will not substitute our judgment for the hearing officer's where her determinations are supported by sufficient evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

It was undisputed that claimant sustained a compensable lumbar injury on \_\_\_\_\_. Claimant testified that she was working as a nurses' aide and helping to move a patient on \_\_\_\_\_, when she felt a sharp pain in her back. Claimant said she had been having upper respiratory problems and that she was not sure what caused the pain. She said that she did not tell anybody about the pain that day, but the next day her pain worsened and she called her employer. She testified that she didn't know whether it was caused by her illness, but that she was in pain. She said she went to see Dr. M on July 31, 1998, who diagnosed a pulled muscle and noted that claimant complained of pain when breathing. Dr. M did not note a cervical or thoracic injury. Claimant said she went to see Dr. C on August 7, 1998, and that she left with a back brace and neck brace. She testified that she hurt "everywhere" at that time. Claimant said she had thoracic pain from the "very beginning." Claimant also indicated that she was having a lot of back pain in the days after her injury and that she did not know where it was coming from or the cause. On August 12, 1998, Dr. C noted that claimant had swelling in her cervical and thoracic spine and in January 1999, Dr. CA noted that claimant had spasms in her cervical and lumbar spine and a knot at the C7 level.

In this case, the hearing officer weighed the evidence and determined that claimant's injury did not extend to her thoracic and cervical spinal area. This extent of injury issue involved a fact question for the hearing officer, which she resolved. Appeal No. 951959, *supra*. The hearing officer could decide to believe all, none, or any part of the evidence, including the medical evidence. Campos, *supra*. The lack of medical evidence that claimant immediately complained of these additional injuries was a factor for the hearing officer to consider in resolving the fact issues in the case. After reviewing the evidence, we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be wrong or manifestly unjust. Cain, *supra*. We affirm the hearing officer's determination that claimant's compensable injury did not extend to the thoracic and cervical spine.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge