APPEAL NO. 991117

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 May 3, 1999. The single issue at the CCH was whether the respondent/cross-appellant's (claimant) compensable injury included an injury to the right shoulder, cervical area, thoracic area, lumbar area, and a left carpal tunnel syndrome (CTS). The hearing officer determined that the claimant's injury included an injury to the cervical, thoracic, and lumbar spine but did not include a right shoulder injury or left CTS. The appellant/cross-respondent (carrier) appeals the decision insofar as it finds that the injury included the cervical, thoracic, and lumbar spine, urging that the medical evidence was not sufficient to prove the claimant's injury extended to these areas. The claimant appeals the decision insofar as it does not include the right shoulder and CTS in his injury, citing medical evidence he believes supports his position. Both parties respond to the others appeal urging that there is sufficient evidence to support that particular part of the decision.

DECISION

Affirmed.

Not in dispute was the fact that on _____, the claimant was rear-ended in a pick up truck while on duty and sustained a compensable injury. The claimant initially was concerned with a whiplash injury; however, his symptoms and pain migrated to a number of other areas of his body during the months following his accident. The carrier did not dispute a compensable injury which included a left shoulder rotator cuff tear which was surgically treated. During the course of his evaluation and treatment, the claimant has been examined, treated, and evaluated by many doctors, both on behalf of the claimant and the carrier. There is one certainty: the medical evidence is highly conflicting, which is not an uncommon phenomenon in cases of this nature.

The carrier urges that the claimant failed to meet his burden of proof on the extent of injury to the cervical, thoracic, and lumbar back because the medical opinions expressed were conclusory, conflicting, and insufficient to establish the extent of injuries as a matter of law as they failed to provide a reliable scientific basis for the opinions expressed and did not show the extent of injuries to a "reasonable medical certainty." Initially, there was no serious challenge to the genesis of the claimant's compensable injury, that is, the rear-end collision. The causal relationship of injury to work which generally gives rise to the need for medical evidence of causation being to a degree of reasonable medical probability (not certainty) is not in question; rather, the question is basically the extent of those injuries. While we have held that the extent of an injury can require medical opinion to a reasonable medical probability where the claimed extended injury involves a condition that is not within common knowledge (avascular necrosis, the onset of which was some 21 months following the injury from a kick in the groin in one case and a repetitive trauma injury not occurring until some three months after the repetitive activity ceased in another), that is not the situation here. Texas Workers' Compensation Commission Appeal No. 990719, decided

May 21, 1999; Texas Workers' Compensation Commission Appeal No. 982649, decided December 23, 1998. Generally, injury to the spine from a specific impact incident can be established without that degree of reasonable medical probability required when a condition is outside common experience as more commonly found in occupational disease cases. Texas Workers' Compensation Commission Appeal No. 982893, decided January 26, 1999; Texas Workers' Compensation Commission Appeal No. 971902, decided _____. In the case under review, there was extensive and comprehensive medical evidence and opinion, albeit, conflicting, which either did or did not relate the various conditions as part of the extended injury. These conflicts were for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The carrier relies on E.I. du Pont de Nemours and Company v. Robinson, 923 S.W.2d 549 (Tex. 1995) and Gammill v. Jack Williams Chevrolet, Inc., 972 S.W.2d 713 (Tex. 1998) in urging that the opinions relied on were conclusory and failed to show a causal relationship between the incident and the extent of the injury. First, we concluded that this case is not a matter of "junk science" referenced in Robinson, *supra*, at pg. 554; rather, what was involved was medical opinion following examination and/or review of medical records by qualified physicians (unchallenged) representing both parties. Clearly, there was conflict between the opinions, but this does not render the opinions inadmissible or otherwise lacking in any probative value. Secondly, we cannot agree that the reports and medical opinions, read in their totality, were conclusory. Each of the doctors expressed his or her opinion based on the diagnostic tests, reports, examinations, or review of records available and gave the reasoning for his or her ultimate opinion. The hearing officer quite apparently evaluated and assessed the weight to be given the various medical reports and opinions and concluded that the injury extended to the cervical, thoracic, and lumbar areas, and there is a sufficient basis for her determination in the testimony of the claimant and the medical records in evidence. In not finding the injury extended to the shoulder and CTS, there was medical evidence and opinion that discounted any causal relationship.

Very briefly summarized, the medical records show that, when the claimant was seen by a doctor two days after the incident, paracervical muscle spasms were noted as well as complaint of left shoulder pain and whiplash. A neurosurgical consultation of November 25, 1997, shows complaints of low back pain and spasms with an impression of lumbosacral sprain. The claimant underwent physical therapy with a diagnosis of cervical and thoracic muscular strain and spasm. The carrier-requested independent medical examination dated January 29, 1998, by Dr. W indicates diagnoses including whiplash, cervical soft tissue problems, intrinsic shoulder pathology and "cannot rule out cervical derangement." Dr. W's report is somewhat critical of the lack of treatment of the claimant. The claimant underwent an independent medical evaluation by Dr. P in September 1998. His report mentions an MRI in January which showed a disc bulge at C5-6, diagnoses cervical and upper thoracic muscle strain (in addition to the left shoulder injury) and that he did not feel that the right shoulder has any demonstrable findings and discounted CTS. The claimant was also examined by a Texas Workers' Compensation Commission-selected designated doctor, Dr. M, on April 4, 1999, and was found to be at maximum medical improvement on April 13, 1999, with a 16% impairment rating. However, and although not

entitled to presumptive weight, Dr. M states in his lengthy, comprehensive report that his opinion is that the patient's symptoms in the neck region are a result of the vehicle incident and that he did not believe the CTS or right shoulder was related. The claimant's treating doctor, Dr. B, whose treatment records are in evidence, opined that he believed the CTS and the problem with the right shoulder are related to the injury of _____. Dr. G, who reviewed the medical records on behalf of the carrier, states his opinion in an April 3, 1999, report that he believed the lumbar area is part of the compensable injury but not the cervical or thoracic area nor the right shoulder or CTS.

Clearly, there was a full menu of medical reports and opinions for the hearing officer to consider in arriving at the extent of injury. We have reviewed the medical evidence and cannot conclude that her findings, conclusions, and decision are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Nor do we conclude that she has misapplied the law or imposed an incorrect standard in arriving at her decision and order. Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Alan C. Ernst
Appeals Judge