APPEAL NO. 991128

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 22, 1999, a hearing was held. He (hearing officer) determined that appellant's (claimant) compensable injury of _____, did not include right carpal tunnel syndrome (CTS). Claimant asserts that the findings of fact and conclusions of law in support of the determination that CTS is not part of the compensable injury are against the great weight and preponderance of the evidence. Claimant also asserts that the hearing officer has a "pattern of overwhelming pro-carrier decisions" in stating that the hearing officer refused to believe "unrebutted medical evidence." Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) as a carpenter on _____, when he slipped and fell. Claimant testified that he was leaving the back of a truck and stepped down with his left foot onto one of two steps provided on the back of the truck; when he was stepping down to the last step with his right foot, his left foot slipped and he fell to the ground. At the time he was holding a small cooler/lunch box under his right arm. He did not remember what happened to the cooler/lunch box but said he fell on his right side, adding that he "hit my shoulder and my right side of the body on the concrete." He also said he did not remember his "arm snapping or moving or anything like that." Claimant did say that he "landed on it" (the cooler), and it hurt his ribs. Claimant does not take issue on appeal with the description of the fall provided in the Statement of Evidence by the hearing officer, which included, "claimant testified at the contested case hearing that his hand was not hyper extended as indicated by [Dr. J] and [Dr. C]." Also included in the Statement of Evidence was a statement that claimant did not land on the cooler.

Claimant testified, when asked how he was injured, that he fell from the truck and landed on his right side, hitting his shoulder and "my right side." He did not testify that his right hand struck the ground, that he tried to break his fall with his right hand, or that he landed on his right hand.

Claimant was treated by Dr. C. Dr. C noted on November 11, 1998, that claimant had neck pain radiating down the right arm; the right arm and hand were numb and tingly. Dr. C indicated that he was concerned that claimant had a cervical strain and radiculopathy. On November 29th Dr. C's assessment was "cervical strain with radiculopathy. HNP [herniated nucleus pulposus]." On January 15, 1999, Dr. C noted that claimant had been referred to Dr. J for an EMG/NCV on December 31, 1998, but said he did not have the results of that study yet. Dr. C's diagnosis remained the cervical strain with radiculopathy and HNP. On February 5, 1999, Dr. C still said that the assessment was cervical strain with radiculopathy, adding, "cervical disc disease (by MRI). IME pending. return 2 weeks." On February 26, 1999, Dr. C added right CTS to the assessment of cervical strain with

radiculopathy and cervical disc disease. On March 3, 1999, Dr. C provided a memorandum indicating he made the diagnosis of CTS based on Dr. J's testing and consult. Dr. C added that he was familiar with claimant's previous bilateral CTS in February 1998. Dr. C added, "according to the patient that injury resolved after several weeks and the patient has not [sic] been largely asymptomatic with the exception of occasional bilateral symptoms related to that injury." (Emphasis added.) Dr. C, in that memo, then said that based on claimant's fall from a truck "landing on his right side and his lunch pail," that trauma to a reasonable medical probability caused or aggravated the right CTS.

Dr. C testified that within reasonable medical probability the fall of _____, caused the right CTS. Dr. C added that claimant had "no symptomatology prior to the date of injury"; he also said that when claimant fell, there was "pressure applied to the wrist and the wrist area." When asked to comment on Dr. J's reference to claimant's having hyperextended the wrist, Dr. C described what hyperextension was–a bending backward of the fingers, hand and wrist. Dr. C also said that Dr. J's reference to hyperextension was consistent with "the description of injury that [claimant] gave." Dr. C also said that the claimant had a "pretty bad case of CTS," and that he would not have been able to work with the problems shown by testing. On cross-examination, Dr. C did agree that claimant had occasional CTS symptoms up to the _____ fall, and Dr. C said that to have symptoms for that period of time was not unusual. Dr. C agreed that if claimant fell on the "shoulder and his back but not upon the wrist," the fall would not have caused CTS. Dr. C added that it "did not make sense" for a person to fall onto his right side without the wrist being "involved at some extent somewhere along the line."

On January 14, 1999, Dr. J reported that his EMG showed evidence of "focal median entrapment neuropathy at the wrist consistent with CTS"; there was also possible C6 foraminal nerve lesion. On January 21, 1999, Dr. J, in a letter to Dr. C, said, "I believe that the mechanism for this injury, which involved hyper-extension of the wrist and elbow, directly caused the right focal entrapment neuropathy of the right wrist." These medical statements were the only ones that addressed the cause of CTS with any explanation given for their assertions, although other medical documents appear in the record, including one by Dr. Co that merely says the CTS complaints "do not appear causally related to the compensable event."

Claimant had right CTS surgery prior to the hearing, but the operative report was not provided in the record.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He indicated in his Statement of Evidence that claimant did not say he fell on his hand or that he extended his wrist. He could question whether assertions of reasonable medical probability are reliable when Dr. C acknowledged that if claimant did not fall on the wrist then CTS would not result therefrom and when Dr. J stated that claimant had hyperextended his right wrist. *See* Texas Workers' Compensation Commission Appeal No. 92316, decided August 21, 1992, which affirmed a finding of no compensable injury based, in part, on medical evidence that if an incorrect history is provided it could make the doctor's conclusions "useless." *Also see* Texas Workers'

Compensation Commission Appeal No. 961599, decided September 27, 1996. While Dr. C said that claimant's CTS was "pretty bad" and that he could not have worked as he was doing if it was in existence before _____, the hearing officer could also consider Dr. C's functional capacity evaluation conducted on March 5, 1999, before surgery, which said that Tinel signs were negative and "Phalen was borderline positive on the right." The hearing officer does not have to accept expert conclusions even when not contradicted. *See* Gregory v Texas Employers Insurance Association, 530 S.W.2d 105 (Tex. 1975), and Charter Oak Fire Insurance Company v Levine, 736 S.W.2d 931 (Tex. App.-Beaumont 1987, writ ref'd n.r.e.). The determination that the compensable injury of _____, does not include CTS is sufficiently supported by the evidence.

We find no support in the record for the claimant's allegation that this hearing officer is generally biased against claimants.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge