

APPEAL NO. 991133

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 May 3, 1999. With respect to the issue before him, the hearing officer determined that the compensable injury of _____, was a producing cause of the respondent's (claimant) cervical spine injury. In its appeal, the appellant (carrier) argues that that determination is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a repetitive trauma injury to her left wrist/arm with a date of injury of _____. At the time of that injury, the claimant had been continuously employed as a cashier in a grocery store since 1986. The claimant testified that the majority of her 30-year work experience had been in retail positions. The claimant stated that, as a cashier, she was required to perform continuous, repetitively traumatic activities. She estimated that she spent five hours of a seven-hour shift performing repetitive activities. She testified that she was required to do a lot of bending, lifting, and scanning of heavy objects. In addition, she maintained that she had to constantly turn her head from side to side and up and down.

The condition in the claimant's left upper extremity has been diagnosed as reflex sympathetic dystrophy (RSD). The claimant's treating doctor for her _____, compensable injury is Dr. R, a chiropractor. The claimant's first appointment with Dr. R for this injury was on October 7, 1996. In his Initial Medical Report (TWCC-61), Dr. R noted that the claimant had cervical spine pain and spasm. He diagnosed cerviobrachial syndrome and cervical myalgia/myositis. In a "To Whom it May Concern" letter of October 16, 1997, Dr. R stated:

[Claimant], as you know, has worked in the past in a very physical setting in which she checked groceries. Her injury at [employer] is in the category of [cumulative trauma disorder] and Sprain/Strain. These injuries are not easily treated and are even more difficult at times to designate as to where an injury may have its origin. The neck and hand/wrist are our two choices for the area of origin for this injury. Since one area feeds the other, then I believe it is fair to say that the cervical spine and the hand/wrist are both involved in this condition. Both, I will add, are caused by her work at [employer] as a cashier. These two areas are interrelated as the stellate-ganglion blocks demonstrated by both areas improving considerably with the administration of this procedure. I don't think there is any doubt in the fact that both conditions are directly related to each other and to her injury at work.

In a report of November 11, 1997, Dr. R opined:

It is reasonable that [claimant] could cause injury to her cervical spine and eventually her hand due to her duties at work. These duties ranged from scanning groceries, gallons of milk, 50 lb. bags of dog food, and various other heavy items which strained her neck and hand. Her cervical condition of [degenerative joint disease] was certainly there prior to the injury of _____; however, the rest of her problems occurred _____ and aggravated her cervical spine condition into a protracted and intractable condition known as [RSD]. Yes, the injury on _____ enhanced, worsened and accelerated her pre-existing cervical condition and also brought the condition of [RSD] into the picture which ties the problem of her hand to her back.

In a report of March 12, 1997, Dr. W stated that the claimant "has a left C6 radiculitis with secondary changes consisting of a cervical and shoulder girdle myofascitis and development of a [RSD] component and not a primary hand pathology such as fracture, tendinitis, or other local pathology." Similarly, an October 10, 1997, report of Dr. W provides:

In summary, she has significant objective pathology indicating her left upper extremity has significant pain syndrome, RSD, and this was precipitated from a cervical referral from the pathology in her neck. This is consistent with the original injury of _____, and although her initial complaints were of pain in her hand and arm, this is not unusual for referral pain, and when further diagnostic studies reveal the true source, this is appropriate to treat.

Dr. S performed a peer review on behalf of the carrier in this case. In his report of November 5, 1997, Dr. S stated that "based on the current medical information and the IME physician's report, one can reasonably state that the patient's symptoms as they relate to her neck and left upper extremity can be causally related to her work activities with a date of injury on _____." In addition, Dr. A, the designated doctor, opined in a letter of March 19, 1999, that the "injury of _____ caused the patient's neck pain and cervical condition"

On January 28, 1999, Dr. B examined the claimant at the request of the benefit review officer to provide an opinion as to whether the _____, compensable injury was a producing cause of her cervical condition. Dr. B concluded that it was not. He stated that "[i]t appears quite clear that the symptomatology appears to be coming entirely from the RSD and not from the cervical degenerative disk disease at this time." In a report of December 19, 1996, Dr. P, an orthopedic surgeon to whom Dr. R referred the claimant, noted that the claimant's cervical x-rays "reveal rather large amounts of lipping with disc space narrowing at 4-5, 5-6, and 6-7 but clinically her symptoms do not appear to be mediated through the neck."

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury and the nature and extent of any such injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936

(Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In this instance, the hearing officer determined the claimant's compensable injury was a producing cause of the claimant's cervical spine injury. Specifically, the hearing officer determined that as a result of her compensable injury, the claimant "aggravated a pre-existing cervical spine condition" and that the "pre-existing cervical spine condition is not the sole cause of her current cervical spine injury." In making those determinations, the hearing officer credited the evidence from Drs. R, W, S, and A establishing a causal connection between the compensable injury and the claimant's cervical degenerative condition over that of Drs. B and P that the compensable injury is not a producing cause of the cervical condition. The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Our review of the record does not demonstrate that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse his determination on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge