

## APPEAL NO. 991136

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 27, 1999. With respect to the issues before him, the hearing officer determined that appellant's (claimant) compensable injury of \_\_\_\_\_, did not extend to injuries to her neck, mid-back, low back, and right shoulder; that the respondent (carrier) timely and sufficiently contested compensability of the alleged neck, mid-back, low back and right shoulder injuries and thus, did not waive its right to do so; and that the claimant did not have disability. In her appeal, the claimant asserts error in each of those determinations and asks that we reverse and render a decision in her favor on each issue. In its response, the carrier urges affirmance.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, she was working as a nurse's aide at a residential facility for Alzheimer's patients. She stated that on that date, she was working at night and a male patient, who was violent, got out of bed and walked out of his room. She stated that she got him back to his room and he sat on the bed. She testified that he had gone to the bathroom in his pajamas; that she tried to get him up to change them; that the patient became agitated; and that the patient kicked her in the left thigh with his right foot, causing her to fall backwards and hit her back on the back of a wooden chair that was between the patient's bed and the other bed in the room. The claimant insisted that only she and the patient were in the room at the time of the incident; however, the carrier introduced a written statement of Ms. J, a licensed vocational nurse, who stated that she was in the room when the patient kicked the claimant on her thigh. Ms. J stated that she did not see the claimant fall or hit a body part against any object in the room as a result of the incident.

The claimant testified that she continued to work after the incident even though she was in a lot of pain. On June 22, 1998, the claimant first sought medical treatment for her injury with Dr. JR, a chiropractor. In her Initial Medical Report (TWCC-61), Dr. JR diagnoses torticollis, which is defined in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (27th ed. 1988) as a contracted state of the cervical muscles, producing twisting of the neck and an unnatural position of the head, intercostal neuritis, and lumbar facet syndrome. Dr. JR's TWCC-61 also notes that the claimant had thoracic and lumbar x-rays and refers her for an MRI. The TWCC-61 is date-stamped as having been received by the carrier on August 24, 1998. An August 4, 1998, lumbar MRI of the claimant's lumbar spine revealed minimal disc bulges at L2-3 and L3-4, creating mild dural sac effacement without spinal stenosis or direct nerve root impingement; mild bilateral arthropathy at L4-5 and L5-S1; and minor spinal curvature or possible mild scoliosis. On September 8, 1998, the claimant had her initial appointment with Dr. KR, a chiropractor, who has become her treating doctor. Dr. KR diagnosed cervical, thoracic and lumbar sprains. On October 6, 1998, the claimant had cervical, thoracic, and lumbar x-rays ordered by Dr. KR. The

cervical x-ray revealed minimal degenerative disc disease at C5-6, the thoracic x-ray showed mild degenerative spondylosis, and the lumbar x-ray demonstrated mild degenerative joint disease of the lumbar spine. On November 24, 1998, Dr. KR referred the claimant for a right shoulder x-ray, which revealed degenerative arthrosis of the acromioclavicular joint and possible impingement syndrome. Finally, on January 29, 1999, the claimant had a cervical and lumbar MRI. The cervical MRI showed "small, posterocentral discal protrusions at C4-5 and C5-6 measuring approximately 2mm causing mild compression to the ventral thecal sac and abutting against, but not compressing, the cervical cord." The lumbar MRI revealed "internal discal derangement of T12-L1 consistent with intervertebral osteochondrosis"; "internal discal derangement with mild spondylosis L2-L3 and L3-L4 compatible with intervertebral osteochondrosis"; "disc space bulging . . . at L2-L3 and L3-L4 compromising the anterior epidural space"; and "facet and ligamentum flavum hypertrophy L4-5 compromising the posterior spinal canal."

On January 11, 1999, Dr. A examined the claimant at the request of the carrier. Dr. A certified that the claimant had reached maximum medical improvement on June 15, 1998, with an impairment rating of zero percent. In his accompanying narrative report, Dr. A noted that his examination revealed "[n]o objective evidence of injury." In addition, Dr. A stated that after reviewing the claimant's physical findings, x-rays, MRI studies and medical records, he "concluded that this patient only sustained a contusion to the front of her left thigh and possibly across her mid-back in the incident of \_\_\_\_\_."

On July 1, 1998, the employer completed the Employer's First Report of Injury or Illness (TWCC-1). The TWCC-1 is date-stamped as having been received by the carrier on July 14, 1998. In the boxes asking for the nature of injury and part of body injured or exposed, the employer listed "c/o back" and "(Lt) thigh," respectively. On July 20, 1998, the carrier completed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), which was filed with the Texas Workers' Compensation Commission (Commission) on the same date, which states, in relevant part:

Carrier disputes the nature and extent of injury of alleged injury [sic]. Investigation reveals a kick to the left thigh only. Carrier disputes any disability or medical treatment other than the specified injury to the left thigh.

Initially, we will consider the claimant's assertion that the hearing officer's determination that the compensable injury did not extend to neck, mid-back, low back and right shoulder injuries is against the great weight of the evidence. The claimant has the burden to prove the nature and extent of her injury. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence. Section 410.165(a). As the fact finder, it is the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts have been established. We will reverse the hearing officer's extent-of-injury determination only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer determined that the claimant did not sustain her burden of proving a causal connection between her compensable injury and her neck, mid-back, low back and right shoulder injuries. It is apparent from a review of the hearing officer's decision that he simply was not persuaded by the claimant's testimony, or the evidence from Drs. JR and KR, that the \_\_\_\_\_, incident caused injuries to those body parts. Rather, the hearing officer chose to credit the report of Dr. A that the claimant's injury was limited to a left thigh contusion. As the fact finder, the hearing officer was privileged to discount the claimant's testimony and the evidence from Drs. JR and KR. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain. The claimant cites Texas Workers' Compensation Commission Appeal No. 961756, decided October 16, 1996, and argues that it mandates reversal in this instance. However, the claimant's reliance on that case is misplaced. In this instance, there is not undisputed evidence of a significant accident and serious injury followed by a course of continuous treatment of that condition. To the contrary, the statement from Ms. J and the report of Dr. A indicate that neither the trauma nor the resulting injury were significant. Thus, we reject the assertion that Appeal No. 961756 necessitates reversal here.

We will consider the timeliness and sufficiency of the carrier's compensability challenge together. As noted above on July 1, 1998, the employer completed the TWCC-1 which identified the thigh as the part of the body injured and listed "c/o back" as the nature of the injury. The carrier received the TWCC-1 on July 14, 1998. The carrier also received Ms. J's written statement on July 14th, which indicated that she had witnessed the incident and that it was limited to a kick in the left thigh. In response to those documents, the carrier filed its TWCC-21, stating that the carrier disputes the nature and extent of the alleged injury, that the investigation reveals a kick to the left thigh only, and that the "carrier disputes any disability or medical treatment other than the specified injury to the left thigh." The claimant acknowledged that this contest was filed within 60 days of the date that the carrier received written notice of the injury; however, she argues that it was not sufficiently specific to contest compensability. In addition, the claimant argues that the carrier cannot file a "preemptive" contest, contending that the carrier could not file a dispute of an injury before it had notice that such injury was being claimed. The hearing officer states that a fair reading of the carrier's TWCC-21 demonstrates that it "disputed any and all alleged injuries other than the left thigh." We agree with the hearing officer's determination in that regard. Thus, the question becomes one of whether the contest by the carrier in this instance was sufficient to dispute injuries of which it received notice after the TWCC-21 was filed or whether it was required to file subsequent TWCC-21s as it received notice of additional claimed injuries. We believe that by stating that it was disputing the nature and extent of the injury, following an investigation, and that it was only accepting a left thigh injury, the carrier has done all that it was required to do to contest compensability of any and all claimed injuries in this case other than the left thigh injury. The statement on the TWCC-21 clearly conveys to both the Commission and the claimant that the carrier will not accept liability for an injury other than the left thigh injury. Where, as here, the carrier has clearly stated its position that the compensable injury is limited to a specific body part, we cannot agree that either Section 409.021(c) or Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6) requires the carrier to file an additional TWCC-21 each time it receives

notice that another body part was allegedly injured. In the face of an unequivocal statement that the carrier contests all injuries other than to the left thigh, it would serve no purpose to require that further compensability contests be filed to restate a position which has been firmly established and communicated to both the claimant and the Commission. Accordingly, we affirm the hearing officer's decision that the carrier timely and sufficiently disputed compensability of the neck, mid-back, low back, and right shoulder injuries and did not waive its right to do so.

The claimant also asserts error in the hearing officer's determination that she did not have disability. In this case, it is apparent that the hearing officer was not persuaded that the claimant's left thigh injury was causing her inability to obtain and retain employment at her preinjury wages. To the contrary, the hearing officer believed that it was the other alleged injuries, which we have affirmed are not a part of the compensable injury, that caused the claimant to miss work. The hearing officer was acting within his province as the sole judge of the evidence in so finding. The disability determination is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Thus, we will not disturb it on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge