

APPEAL NO. 991349

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 3, 1999, a hearing was held. He (hearing officer) determined that respondent's (claimant) compensable neck injury of _____, was a producing cause of a disc herniation at C4-5 and also of another disc herniation at C6-7, along with a disc bulge at C5-6 and seepage of cerebral spinal fluid. Appellant (carrier) asserts that the hearing officer incorrectly addressed areas of the cervical spine not included in the issue, that the evidence does not prove that claimant's cervical strain caused a herniated disc, and that causation was not shown by expert medical evidence. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. She testified that she worked using a computer to retrieve information, primarily, as opposed to entering information into the computer. She indicated that on _____, she had neck and shoulder pain and saw a doctor, Dr. S. The parties stipulated that claimant sustained a compensable neck injury on that date, said to be a strain. However, the medical records indicate that claimant had neck problems of long duration. Dr. K, on February 20, 1997, less than two months after the claimant injured her neck, according to the stipulation of the parties, said that claimant "has a long history of cervical strain" also stating that it has occurred for "several years during working with computers." Since the hearing officer comments in his Statement of Evidence that "the medical evidence demonstrated that there were no disc herniations in January 1997," there will be no further discussion of the very long chronic "strain" of several years.

We do note that after the January 1997 injury the medical records show no MRI until December 1998. While the hearing officer has ruled out "herniations" in January 1997, no studies are observed that would rule out "disc bulges" at that period of time. While Dr. K in February said that claimant denied "significant" radicular pain, he did not say she had no radicular pain. In April 1997, Dr. S noted that claimant's pain was primarily in the "paracervical region of C4-C6," which is the same area as the largest herniation found in December 1998 at C4-5.

With a compensable neck injury, and with no medical evidence (only x-rays were provided in early 1997) to show that no disc bulges were present, the claimant is entitled to medical care for "effects naturally resulting from the compensable injury" according to Section 408.021. Also see Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998, which commented that Section 408.021 does not modify the quoted phrase by imposing some period of limitation, such as one year or two years, nor does it limit lifetime medical care to only be available if the compensable injury "gets no worse."

Carrier cites Texas Workers' Compensation Commission Appeal No. 961218, decided August 8, 1996, but that case merely affirmed a hearing officer's determination that

a herniated disc was not a result of a cervical strain; the opinion pointed out that while claimant argued that Texas Workers' Compensation Commission Appeal No. 950549, decided May 19, 1995, was analogous (a C4-5 disc bulge was found to be part of that injury from looking up and down at a computer screen), that did not mean that in Appeal No. 961218, *supra*, the great weight of the evidence was against the hearing officer's determination which was necessary to reverse that case. In that same vein, Appeal No. 961218 may be said to support the determination in this case because here the carrier is asking that we reverse the factual determination tying the herniated disc(s) to the compensable injury. We agree that it is a factual determination for the hearing officer to make.

In addition, carrier cites Texas Workers' Compensation Commission Appeal No. 962650, decided January 31, 1997. It too affirmed a hearing officer's determination that the claimant in that case did not show that she sustained a repetitive trauma injury, commenting, "we cannot say that the finding that claimant did not sustain a compensable injury to her right shoulder, arm, and neck is so against the great weight and preponderance of the evidence as to be clearly wrong." The same standard will be applied to the hearing officer's determination in the case under review.

Carrier also states that Merrell Dow Pharmaceuticals, Inc. v Havner, 936 S.W.2d 706 (Tex. 1997), shows that the medical evidence in this case is not sufficient to prove causation. In Texas Workers' Compensation Commission Appeal No. 972478, decided January 16, 1998, Havner was cited, but that Appeals Panel decision dealt with a doctor's misconception of the facts in regard to the alleged injury, not with "unreliable foundational data," which may be more inclusive, and which was present in Havner. See Texas Workers' Compensation Commission Appeal No. 982501, decided December 9, 1998, which discussed Havner and pointed out why it did not apply (Section 410.165(b) requires written reports of a health care provider to be admitted, conformity to rules of evidence is not necessary, and the birth defect question in Havner does not compare to a worker's injury on the job; it added that even Havner provides for consideration of the evidence in the context of the case.)

The medical evidence in the context of this case shows that claimant had a neck "strain" that lasted for years, that while she had some radicular symptoms in February 1997, they became much more pronounced in the latter part of 1998 (while claimant stated that she did not visit Dr. S from October 1997 to June 1998, she said that she regularly refilled her Vicodin prescription and muscle relaxer prescription and that her symptoms did not abate during that time).

In September 1998, Dr. B thought an MRI was necessary. In November 1998, Dr. B stated, before the MRI was provided, that he thought claimant "may have pathology at the C4-5 or C5-6." Then in December 1998, Dr. B said that the "central herniations are consistent with her pain pattern." (Emphasis added.) In January 1999, Dr. B, in discussing whether epidural injections were reasonable, pointed out that:

there is no specific protocol indicating that a duration of two years contraindicates efficacy of epidural steroid injections. I would be in agreement with [Dr. F] in that an acute episode of herniated disc does tend to

respond statistically better than a procedure for an ongoing chronic problem.
[Emphasis added.]

Dr. Sa said in May 1999 that claimant's "symptoms" are "most likely" the result of repetitive motion as shown in her history. Dr. S said in March 1999 that claimant's pain "could have been due to the herniated discs." As can be seen, neither medical opinion states whether or not herniated discs did or did not develop at the time of, or from, the compensable injury of _____.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. With an acknowledged compensable injury in the neck, with pain in April 1997 at the same level as the most prominent herniated disc, with claimant's testimony of pain throughout the time period, with no medical evidence of any other basis for the herniations or bulge, with no studies in early 1997 showing that there were no disc bulges, and with claimant's medical records showing that she had a neck "strain" that lasted for years as of January 1997, the determination that the most prominent herniated disc was the result of the compensable injury is sufficiently supported by the evidence. In addition, the medical evidence, including the MRI of December 1998, does not differentiate between the most prominent disc herniation at C4-5, and another herniation, and another bulge, and spinal fluid leakage. Also, the claimant argued in final argument that the pathology, included all herniated discs, were related to the compensable injury; carrier did not respond in its argument that only one herniated disc was in issue. We do not conclude that the hearing officer erred, in this case, in addressing the pathology presented by the same medical evidence that presented the evidence of the herniated disc at C4-5.

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:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge