APPEAL NO. 991387

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 June 3, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable cervical injury on _____, and whether the appellant (carrier) waived the right to contest compensability of a cervical injury. The hearing officer found that the claimant did sustain a compensable cervical injury but that the carrier did not waive its right to contest compensability. Carrier appeals the determination that the claimant sustained a compensable cervical injury, urging that the evidence is legally insufficient to establish a cervical injury. Claimant argues to the contrary, citing evidence that he feels is sufficient to support the factual determinations of the hearing officer.

DECISION

Affirmed.

Not in dispute was the fact that the claimant sustained a compensable shoulder injury on _____, for which he subsequently underwent rotator cuff surgery in January 1998 and again in September 1998. Claimant testified that he also had pain in his cervical area about two to three weeks after the _____, incident, and that it bothered him more after his surgery in January and that he reported this to his doctor, Dr. D. Claimant stated he tied his neck pain to the November injury when Dr. D ordered an MRI in May 1998. The carrier refused to authorize an MRI and disputed that the _____, injury included or extended to a cervical injury.

Dr. D gave telephonic testimony in which he indicated that the claimant has neck pain and that x-rays show some degenerative disc changes that "looks like he may have a problem in his neck." However, Dr. D stated that because an MRI was not authorized, he could not be sure there was a disc rupture, and neck pain and shoulder pain can be one and the same or one can manifest itself in the other. He believed the neck problems, pain in the neck radiating down the arm, were part of the original injury, but that if an MRI looked fine, then the pain would be attributable to the shoulder.

The claimant's current treating doctor, Dr. G, testified over the telephone and responding to questions, stated that he is the claimant's treating doctor and that the claimant has a neck injury which is cervical radiculopathy.

Medical records from both doctors are in evidence. Dr. D notes in a May 1998 report that x-rays were taken of claimant's neck which "do show some mild anterior bony changes, which might be encroaching on the canal, which might have been aggravated with his injury and the popping he felt in that same general area." As indicated, Dr. D wanted to have an MRI performed, but this was not authorized. A July 13, 1998, note from Dr. D states that claimant continues "to have problems in the neck region with spasming in the neck, etc." He states in a November 24, 1998, letter that he thought the claimant

injured both his neck and shoulder and that the neck is related to his injury and should be dealt with as such. Dr. G states in a September 30, 1998, note that the claimant's neck symptoms are clearly related to his torn rotator cuff, and that he thinks "it is medically necessary to treat both the cervical spine and the shoulder and I believe his injury is workers' compensation related." His January 6, 1999, note refers to the claimant's torn rotator cuff and cervical radiculopathy and states that he felt a cervical epidural injection was indicated.

The carrier introduced a report from Dr. T, who reviewed the claimant's medical records and opined that the neck complaints were not causally related to the compensable shoulder injury, stated "it is very difficult to ferret out what in fact is neck and/or shoulder in these kinds of problems," but indicated that the medical information in this case "seems very straight forward that the patient's work compensable body part is his shoulder and not his neck."

Clearly, a complete diagnosis in this case was greatly hampered by the lack of an MRI, as the hearing officer repeatedly recognized. However, from all the evidence before him, he found as fact that the claimant sustained a neck injury on _____, a shoulder injury having been accepted. We are faced with the question of whether there is legally sufficient evidence to support this finding. Carrier urges that the medical opinions of Dr. D indicating a cervical injury are speculative and that Dr. D stated that if an MRI is negative for cervical injury he would conclude the symptoms are coming from the shoulder. Carrier also urges that Dr. G does not explain his medical opinion that claimant has a cervical injury and it is little more than a guess absent the MRI. Thus, the carrier urges, the evidence is legally insufficient. Initially, we note that this is not a case of so-called "junk" science; rather is a situation where there are considerable medical records spanning a period of time since the date of the injury incident. *See* Texas Workers' Compensation Commission Appeal No. 991117, decided July 8, 1999; Texas Workers' Compensation Commission Appeal No. 991302, decided July 29, 1999. While the disapproved MRI would very likely have aided a definitive diagnosis in this case, that is not to say that absent an MRI or other specific diagnostic test, the evidence is legally insufficient to support the finding of the hearing officer. In this regard, we cannot conclude that the claimant's testimony regarding his injury and its effects; the results of the x-rays as stated by Dr. D; his opinion, albeit hampered by the lack of an MRI, that the claimant had a cervical injury; together with the unequivocal opinion of Dr. G, the current treating doctor who examined and apparently had access to the claimant's medical records, that the claimant had a cervical radiculopathy injury provided a legally insufficient evidentiary basis in support of the hearing officer's finding. While the state of the evidence in this case may give rise to inferences different from those found by the hearing officer, this is not a sound basis on which to predicate a reversal of his finding. We simply cannot conclude that the determination of the hearing officer was 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).

Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge