

APPEAL NO. 991391

Following a contested case hearing held on June 2, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by concluding that the appellant's (claimant) "compensable injury of _____, does not extend to the back, cervical radiculopathy, and/or bulging at C7, left hand, left wrist, or left arm." Claimant has appealed, contending that "common sense" and her medical evidence warrants a reversal and a decision in her favor. The respondent (carrier) urges in its response that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

Claimant testified that on _____, she was working as a flight attendant on a (employer) flight to (city 1) and at a point in the flight as she was taking her seat, the airplane hit turbulence and dropped around 1,000 feet and her head hit the ceiling and she landed on her right side on the seat arm rest. She further testified that she was seen by an employer's nurse in city 1 and declined to go to a hospital; that after returning to (city 2), her base city, in passenger status, she went to a hospital emergency room (ER); that the employer sent her to Dr. B whom she told that her right arm and head hurt; that she began to have severe migraine headaches with no past history of them; and that she subsequently began treating with her own doctor, Dr. W, who had previously performed her cosmetic surgery.

Claimant further stated that Dr. W concentrated on treating her right upper extremity (UE), performing eight operations on that UE including carpal, medial, and ulnar nerve releases; that her neck and low back were injured at the same time as her right UE and that she received some physical therapy for her neck and back; and that sometime during the 1994 - 1996 period, while undergoing the right arm operations, she developed left arm pain which she felt was caused by her overuse of her left UE to compensate for the loss of use the right UE. Claimant also indicated that in 1997, after attempting for a second time (the first time being in 1994) to return to work for the employer, her neck and back pain became worse and she had to stop working and also had to pay for diagnostic testing of her neck and back after the carrier refused to do so. Though conceding that she obtained a realtor's license and did some small amount of real estate sales work after her injury, claimant denied the occurrence of any post-injury event which could have caused her left UE injury.

The ER record of _____, reflects that claimant complained of headache and pain to her right forearm. Dr. B's record of October 18, 1993, reflects a history of claimant's flying in rough air and hitting her head on the overhead, landing on her right arm against an arm rest, and noticing an immediate onset of pain. Dr. B's clinical findings were "generalized contusions, bruise and inflammatory process."

Dr. W's November 1, 1993, note states that claimant had hyper-reflexivity and strength loss throughout the right UE, that she had "some point tenderness over C7 but not a good radicular pattern," and that her left UE is "normal." On November 9, 1993, Dr. M, to whom Dr. W referred claimant for electrodiagnostic studies, reported that claimant gave a history which included "cervical pain that is chronic, stable, constant, and right-sided, radiating into the occipital region, and without Valsalva component." Dr. W's July 14, 1994, letter to the carrier states that, in addition to her carpal tunnel syndrome (CTS), claimant sustained sprain/strain injuries to her "left" UE and neck. This is the first reference to the left UE and, in the context of all of Dr. W's records, could have been intended as a reference to the right UE. Dr. W's records reflect that he performed numerous surgical procedures, apparently eight, on claimant's right UE in the period from December 1993 through August 1995; that on June 29, 1995, claimant complained of left hand pain and Dr. W wrote that she was "getting some overload [CTS] in the left hand owing to her disability in the right hand"; that on July 11, 1995, Dr. W sought authorization from the carrier to treat recurrent right CTS and "new onset left CTS."

The July 25, 1995, report of Dr. Z, a hand and UE surgeon who examined claimant, stated his impression as bilateral CTS; recurrent right cubital tunnel syndrome; left cubital tunnel syndrome; lateral epicondylitis, right elbow; and bilateral thumb tendinitis.

Dr. S, the medical director of a pain institute to whom claimant was referred for evaluation by Dr. W, reported on September 11, 1996, that claimant complained of right arm pain from the elbow to the fingers, and pain in the right side of her neck and in her right shoulder; that she has had eight surgical procedures on her right UE through August 1995; that she has a history of migraine headaches which are not her main complaint at this time; that her cervical spine has full range of motion with moderate tenderness over the facets and paraspinal muscles, more on the right; that she has moderate tenderness in the upper trapezius muscle and supraspinatus muscle on the right; and that she has no tenderness or trigger points in the lumbosacral spine. Dr. S's impression included chronic regional pain syndrome type II (neuropathic); probable chronic regional pain syndrome type I (RSD); probable cervical facet syndrome; and myofascial pain syndrome of the upper back and neck. Dr. S's report concluded with a treatment plan, including a psychological pain evaluation, and the comment that claimant said she would think about it.

Dr. W's records further reflect that, upon his referral, claimant received joint mobilization and other chiropractic treatments to her cervical, thoracic, and lumbar spine regions from Dr. RW, in September and December 1997 and further chiropractic treatment from Dr. RW in April 1998; and that on April 22, 1998, he reported that an EMG showed "a little bit of nerve encroachment in the cervical spine area, particularly C-7." Dr. W wrote on May 5, 1998, that the UE treatments "took precedence over her neck problem which resolved to a low grade situation that was relatively insignificant compared to her various other problems"; and that after returning to work in 1997, claimant had increasing problems with her neck pain which radiated to her low back and down her right arm, and that this "was much as we had to begin with at the time of the original injury." Dr. W's May 29, 1998, record reflects his belief that claimant's neck and back problems relate to her

_____, injury. A July 9, 1998, record reflects that Dr. W referred claimant to Dr. JF, who recorded claimant's complaints of neck and low back pain and assessed nerve root inflammation in the cervical and lumbar spinal regions.

A June 2, 1998, report of Dr. F, who apparently reviewed the records for the carrier, opined that the alleged neck injury with symptoms of strain should have been resolved in approximately six weeks; that "the extension of clinical signs was not found to be reasonable"; that the "migration of symptomatology to the opposite hand and back is not at all a related condition"; that "causality is not realistic"; and that claimant "should have had a psych evaluation and probably pain management years ago."

Dr. P, who saw claimant on July 22, 1998, for possible trigeminal neuralgia, reported that claimant's recent MRIs showed a minimal disc bulge at C6-7 and evidence of bulging discs at L4-5 and L5-S1.

Dr. F's July 31, 1998, report states his assessment as severe nerve root inflammation in the cervical and lumbar regions with associated myofascial pain and cervicogenic headaches and migraines along with trigeminal nerve pain.

Dr. S wrote the carrier on October 23, 1998, stating that claimant did not proceed with his previously proposed treatment plan; that she returned to work in July 1997 and her pain became more severe and associated with numbness and weakness of the right arm, pain in the neck, low back, and right leg, and severe headaches; and that she had to stop working in March 1998 and did not recall any new injury. Dr. S protested the denial of authorization for cervical epidural steroid injections, stating that claimant's injury in the airplane was "clearly a reason for neck injury" and should be covered by the carrier.

As noted, claimant contended that her neck and low back were injured in the incident of _____, and that her left UE injury resulted from overuse as a consequence of the injury to her left UE. Claimant had the burden of proving these contentions by a preponderance of the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer found that the compensable injury of _____, does not extend to or include injury to claimant's neck, back, or left UE and that her neck, back, and left UE conditions are not causally related to the _____, injury. The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. The hearing officer could consider the complete absence of any reference in the medical records to a low back injury for years after the injury and the scant references to support the claimed cervical injury together with claimant's having stated a history of preexisting, chronic right-sided neck pain. As for the claimed left UE injury, the Appeals Panel has indicated that mere "overuse" of an opposite limb, without more, will not

establish compensability. See Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Judy L. Stephens
Appeals Judge