APPEAL NO. 991477

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 17, 1999. The issues at the CCH were whether the compensable injury sustained on _____, extends to an injury to the right upper extremity, whether the appellant (claimant) had disability, whether the claimant has reached maximum medical improvement (MMI), and what is the impairment rating (IR). The hearing officer determined that the compensable injury sustained on _____, does not extend to an injury to the right upper extremity, that the claimant had not reached MMI as of the date of the evaluation by the designated doctor, that the issue of IR is not ripe for adjudication, and that the claimant did have disability from June 6, 1997, through November 18, 1997. The claimant appeals, urging that the hearing officer erred in concluding that the claimant's _____, compensable injury does not extend to an injury to the right upper extremity. The respondent (self-insured) replies that the hearing officer's decision is correct and should be affirmed. The determinations of disability, MMI, and IR have not been appealed and have become final under Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left upper extremity injury on _____. The claimant, a sewing machine operator, testified that the injury was caused by repetitive use of her left arm. The claimant testified that on _____, she had pain only in her left shoulder. The claimant sought medical treatment for her left upper extremity with Dr. Z, and was subsequently referred to Dr. D, who diagnosed a rotator cuff sprain and partial tear of the rotator cuff. On July 8, 1997, the claimant had left shoulder surgery. The claimant testified that after the surgery, when she stopped using her left arm, she began to feel similar pain in her right shoulder. According to the claimant, she complained to Dr. D about right shoulder pain in July and August 1997, and he told her to go see Dr. Z because he did not have permission from the self-insured to treat her right shoulder. On November 10, 1997, Dr. D certified the claimant at MMI and assigned a five percent IR.

The medical records of Dr. Z indicate that on (alleged date of injury), the claimant complained of right shoulder pain. Dr. D's November 26, 1997, medical report states that the claimant had complaints of pain and tenderness in her right shoulder joint region. In December 1997, the claimant changed treating doctors and began to treat with Dr. M. Dr. M's Initial Medical Report (TWCC-61) reflects a date of injury of (alleged date of injury), and diagnosis of sprain/strain shoulder/arm, pain in shoulder region, and muscle spasm. Dr. M testified that the claimant presented to him with a rotator cuff injury to both shoulders, and he treated both shoulders. A March 12, 1998, MRI of the right shoulder indicates a small tear of the rotator cuff.

The self-insured asserts that the claimant failed to establish a causal relationship between the _____, injury to her left shoulder and any condition related to her right shoulder. The self-insured argues that the claimant did not complain of right shoulder problems until approximately nine months later, after she received notice of Dr. D's certification of MMI and IR. On cross-examination, the claimant admitted that, upon the advice of her previous attorney, she had filed a separate workers' compensation claim for her right shoulder with a date of injury of (alleged date of injury).

The claimant had the burden to prove the extent of her compensable injury. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

The hearing officer found the evidence insufficient to causally link the claimant's right shoulder injury with her compensable shoulder injury of _____. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we will reverse such decision only if it is so contrary to the great weight and preponderance 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). We find there was sufficient evidence to support the determination of the hearing officer that the compensable injury sustained on _____, does not extend to an injury to the right upper extremity.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Susan M. Kelley
Appeals Judge