APPEAL NO. 991528

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 8, 1999, a contested case hearing was held. The issues before the hearing officer were:

1. Does the Claimant's [appellant] compensable injury include or extend to include an injury to the cervical spine?

2. Did Carrier [respondent] waive its right to contest the extent of Claimant's injury to include the cervical spine by not disputing compensability within 60 days of being notified of the injury?

With regard to those issues, the hearing officer determined that the claimant's compensable (bilateral carpal tunnel syndrome (BCTS)) injuries did not include an injury to the cervical spine and that "because Carrier waived the right to contest compensability of the cervicobrachial syndrome injury by failing to timely contest it, Claimant's cervicobrachial syndrome injury is compensable." The hearing officer, in other portions of the decision, defines cervicobrachial syndrome injury to include "cervical nerve root entrapment and cervical herniation injuries."

Claimant appeals, taking issue with some minor wording of the hearing officer's factual recitation, contending that Dr. K 1994 and Dr. H, D.C., early 1995 reports had given carrier written notice of a claimed cervical injury, that she has not reached maximum medical improvement (MMI) (not an issue) and that she had been given an "improper tool" to work with. Claimant also contends that her claimed "injuries do in fact include injury to the cervical area" and requests that we give her "request serious thought." We interpret that to mean that claimant wants us to reverse the hearing officer's decision that the compensable injury does not include the cervical area. The self-insured school district, referred to as self-insured or carrier, as appropriate, in a timely response, responds to the claimant's various points stating that the hearing officer correctly decided the various points and "requests that the decision of the Hearing Officer not be reversed." In that carrier has not appealed the findings on the issue of timely contest of compensability of the cervicobrachial syndrome injury, the hearing officer's decision on that issue has become final. *See* Section 410.169. We will, however, refer to various medical reports involved in order to address claimant's appeal that the compensable injury includes the cervical spine.

During the time for filing an appeal, Dr. RP, one of the doctors in this case, wrote the Texas Workers' Compensation Commission (Commission) giving his opinion that the "carrier waived the right to contest compensability and for this reason this was approved" and stating that "cervicobrachial syndrome or herniation at the disc at multiple levels are synonymous." Dr. RP is not a party to this case, his letter of July 15, 1999, was not part of the record nor does it constitute newly discovered evidence, and consequently it will be disregarded.

DECISION

Affirmed.

At the outset we note that claimant testified through a translator and frequently continued talking while the translator was attempting to translate her testimony, resulting in two people talking, in two languages, at the same time. This was further complicated by the fact that someone in the hearing room kept coughing, making the translated testimony extremely difficult to understand. The hearing officer should be cognizant that paper rustling, people coughing, passing trains and planes, loud talking and laughing in adjacent offices are all picked up on the microphone and make the testimony very difficult to understand, particularly when it is over what amounts to simultaneous translation.

On the merits, the parties stipulated that claimant sustained a compensable BCTS injury on _____. Claimant testified that she was a food service worker for the self-insured and that on the date of injury was scraping food off a stove with a potato peeler when she felt pain in her hands, wrists and forearms.[1] Claimant, at one point in her testimony, apparently demonstrated where she had pain and the hearing officer described it as being in the shoulder blade area. Claimant testified that the pain in her hands later developed swelling. Claimant said that the following Monday she saw a doctor and was eventually referred to Dr. K, who released her to return to work. Claimant testified that she told the doctors she saw that she had neck pain.[2] Claimant testified that she returned to work on "Monday" but apparently was unable to perform her duties and either was sent home or went home. At some point, claimant sought treatment with Dr. H.

The medical evidence includes a report dated December 13, 1994, from Dr. K, who saw claimant for a neurological evaluation. Dr. K stated that claimant complained of her wrists swelling but he "did not see any mass or swelling." Dr. K recites that claimant had only been working for "one and a half months," had prior to then been "a housewife only," that his exam of the cervical spine and upper extremities was normal, and that he could not explain her symptoms or complaints. Claimant next saw Dr. H, who in a report dated December 30, 1994, notes cervical nerve irritation and recommended "a cervical radiographic study." No work-related history is recited. That report was received by the carrier's adjuster on December 30, 1994. Other Specific and Subsequent Medical Report (TWCC-64) forms dated January 10, March 7, April 17, May 12, and August 8, 1995, from Dr. H all diagnose "Cervical Nerve Root Entrapment" but fail to make a connection between that condition and claimant's work in November 1994. All of those reports were date-stamped as being received by carrier shortly after the date of the report. The hearing

[1]Claimant, in her appeal, makes an issue of the fact that the hearing officer recited she was scraping food off a pan rather than the stove, and that the potato peeler was an "improper tool." Neither of those points, even if correct, is particularly relevant to this case and neither constitute any kind of reversible error.

[2]Claimant was very vague in her testimony about dates and the names of the doctors she initially saw. Also, much of claimant's testimony is not supported by the medical reports.

officer makes findings that Dr. H's "medical records do not contain facts showing compensability."

Claimant was next seen by Dr. A, D.C., who, in a report dated February 2, 1995, recited the potato peeler scraping incident, Dr. H's treatment, and claimant's complaints including that she injured her neck in the scraping incident. That report was date-stamped as having been received by carrier on March 6, 1995. The hearing officer made various findings that Dr. A, in his February 2, 1995, report diagnosed cervicobrachial syndrome (and other conditions), that the diagnoses were on a TWCC-64 dated February 8, 1995, which, combined with the narrative, had all the information required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 (Rule 124.1) and constituted written notice of injury to the carrier. The hearing officer found that carrier did not dispute compensability until February 7, 1997, and the dispute was not timely. As indicated previously, those findings have not been appealed and have become final.

A cervical MRI performed on February 7, 1995, showed a small indentation of the thecal sac at C5-6 "due to a chronic spondylotic process." Dr. H apparently referred claimant to Dr. MP who, in a report dated May 3, 1995, noted spondylotic changes in cervical x-rays and recommended a cervical MRI. Although Dr. MP recites the potato peeler scraping incident, he does not comment on a cervical connection of that incident to claimant's cervical complaints. Dr. MP suggested "some functional overlay" in a report dated October 25, 1995. Claimant was also seen by Dr. L, who in a report dated October 30, 1995, had an impression of "Pain, right hand, question cause---possible sympathetic dystrophy, possible emotional overlay." Claimant was seen by Dr. T, D.C., a designated doctor who gave claimant a three percent impairment rating for her compensable wrist injury but did not rate a cervical injury in December 1995.

Claimant eventually began treating with Dr. RP, who, in a report of a January 8, 1997, visit, stated an "MRI shows herniated disc C4-C5, C5-C6 & C6-C7." In a report dated February 18, 1997, to carrier's adjusting firm, Dr. RP repeats the opinion that an MRI shows herniations at C4 through C7 and that, in Dr. RP's "opinion, the patient's neck injury is related to the original injury." To the contrary, medical peer review reports dated January 24, 1995, and June 6, 1995, state that the neck and cervical root entrapment is unrelated to the "work injury complaint." Another medical memo dated January 29, 1997, advises the self-insured that the "compensable injury is to the wrists only" and that the treatment to claimant's "cervical area" should be disputed.

The hearing officer made the following findings:

FINDINGS OF FACT

31. The evidence failed to establish to a degree of reasonable medical probability that Claimant's cervical injuries, whether the diagnosed cervical nerve root entrapment, cervicobrachial syndrome, or cervical disc herniations, were caused by scraping a pan [or stove as claimant argues] with a potato peeler on one occasion.

32. Claimant did not sustain a compensable cervical injury in the course and scope of her employment on _____.

Most of claimant's appeal deals with carrier's failure to timely contest compensability. On the issue of extent of injury to include the cervical spine, claimant references Dr. RP's February 18, 1997, report as evidence that her compensable injury includes "the cervical area." The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal basis.

There was sparse evidence that claimant's compensable injury extended to the cervical spine--that being Dr. RP's February 18, 1997, report. The hearing officer could consider the numerous doctors claimant had seen prior to that time who had not mentioned an opinion that the one-time scraping incident had caused claimant's cervical condition and the peer review reports which had affirmatively stated the cervical complaints were unrelated to the compensable injury.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge