APPEAL NO. 991637

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 July 1, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____; whether she sustained disability; and whether travel in excess of 20 miles one way was reasonable or necessary for appropriate and necessary medical treatment. The hearing officer determined that the claimant did not sustain a compensable injury on _____; that she did not have disability; and that the travel in excess of 20 miles one way was not reasonable or necessary to obtain appropriate and necessary medical care. The claimant appeals several findings of fact, conclusions of law, and evidentiary rulings and urges that the determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responds, pointing out evidence supporting the hearing officer's determinations and urging that there is sufficient evidence to support the decision. The carrier also points out, in urging that the hearing officer did not commit error in the evidentiary rulings on appeal, that several items of evidence the carrier offered were improperly excluded.

DECISION

Affirmed.

The claimant, an 18-wheel truck driver, testified that on _____, she felt pain shoot up her right arm, across her shoulder, and up her neck as she pulled a pin to release a fifth wheel trailer that she had driven into a truck yard. In a prehearing interview, she stated that there was nothing wrong nor any problems with the fifth wheel and that she was doing her normal duties and what she always did on _____, when she felt the pain. During the CCH, she indicated that when she first attempted to pull out the pin, it would not release and that she got in the truck and backed it up. After that, she said, she had to slightly jerk the kingpin release and that it released the second time. She did not think much about it and completed her shift. The next day, she states, she was hurting "to a certain extreme" and she subsequently contacted a fellow driver who referred her to a chiropractor, Dr. B, who was some 175 miles (round trip) from the claimant's residence. In her prehearing statement, the claimant stated that she knew there were closer doctors but that, unlike Dr. B, they are not "union" doctors and that he is a very good doctor. She also testified that for one of her prior injuries she had successfully treated with a doctor in a nearby city but that she "just really didn't think about it" when asked why she did not go back to him this time. The claimant saw Dr. B on August 3, 1998, and was diagnosed with "cervicobrachial syndrome, somat dysfunc upper extr, injury mult nerve shldr/arm, mononeuritis upper limb" and was taken off work. Subsequently, the claimant reported her injury to two people in the dispatch office. She has continued to treat conservatively with Dr. B (going for treatment as much as three times a week since August 3, 1998, but has also been referred to a number of other doctors and has been recommended for surgery). She testified that she has been in pain and is unable to work.

Considerable medical evidence was admitted into evidence as well as the telephonic testimony of Dr. C, who had seen the claimant twice on referral. Dr. C stated he felt that the claimant had cervical disc disease most likely at the C5-6 level. He stated that he could not say definitively whether her condition was an ordinary disease of life or if it was the result of a trauma at work. He also stated that when he saw the claimant for the first time, she did not tell him she had prior neck problems and that he was not aware of any prior surgeries. He subsequently saw prior medical records showing surgery for carpel tunnel and cubital tunnel (1994) and showing mild degenerative changes at C5-6 (1992). He was aware of an MRI in November 1998 which he stated showed at that time a bulge at C5-6. He also stated he did not see a July 1996 report from Dr. J which notes cervical radicular pattern pain most likely involving the C5-6 level, had not seen medical records prior to the date of injury of _____, and had not reviewed the medical report from the carrier's doctor, Dr. SG, of April 15, 1999.

The medical records from Dr. B were in evidence and show a lengthy course of chiropractic treatment and referral to other doctors, including Dr. C. In evidence were the November 1998 MRI, which showed some disc protrusion with associated spondylitic ridge and some stenosis, and the November 1998 nerve conduction studies which showed C6 and C8 radiculopathy, ulnar neuropathy at the elbows, and mild sensorimotor peripheral polyneuropathy. Dr. H opined, based on the studies, that the claimant's current condition was a result of the _____, incident. Dr. SG's report disagreed with some particulars in Dr. H's findings and opinion.

Medical records prior to the current injury offered by the carrier show mild degenerative changes in the cervical area in 1992 and a cervical MRI in 1996 showed bulging. In a March 1994 report from Dr. CO, a history and impression of right lateral neck, shoulder, and arm pain with treatment including corticosteroid injection was assessed. The MRI impression by Dr. M listed an impression of multiple levels of spondylosis most significant at the C5-6 disc level.

The hearing officer, weighing the conflicting evidence and somewhat inconsistent testimony, found that the claimant did not prove that she sustained an injury on _____, or that she had disability. She also found that the 175-mile round trip for medical treatment was not "reasonable or necessary." As she indicated in her decision, she did not find the claimant's testimony to be persuasive in essential elements or Dr. B's records and opinions to be credible. In this regard, the hearing officer, as the sole judge of the relevance and materiality of the evidence and its weight and credibility (Section 410.165(a)), could believe all part or none of the testimony of any witness including the testimony of the claimant. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621(Tex. Civ. App.-Amarillo 1980, no writ). In a similar vein, the hearing officer determines the weight to be given conflicting medical opinion. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where a medical opinion is based on erroneous or incomplete information or history, its value can appropriately discounted. *See* Texas Workers' Compensation Commission Appeal No. 991501, decided August 30, 1999.

Regarding credibility, while there was some variance in the claimant's statements of how the injury occurred and why she sought medical treatment so far from her residence, of greater significance is the apparent lack of full disclosure of prior medical conditions to at least some of the doctors rendering opinions as to whether there was any new injury as a result of an incident occurring on _____. This, the hearing officer indicates, was significant in her evaluation of the considerable medical evidence extending back to 1992 showing similar conditions in the same areas, her evaluation of the weight to be given Dr. B's reports, and the evaluation of the claimant's testimony. From our review of the evidence, we cannot conclude that there is no probative basis for the determinations made by the hearing officer or that her determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust in finding and concluding that there was no compensable injury proven and no disability. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Without a compensable injury, there is no disability by definition. Section 401.011(16). That different inferences could be made from the evidence does not form a sound basis for disturbing the determinations. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994.

The claimant complains that several items of evidence were improperly admitted by the hearing officer over objection for untimely exchange. Much of this was prior medical records of the claimant and was exchanged shortly after the 15-day period from the benefit review conference. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). It appeared from proffers by counsel for both sides that several documents, including one from the claimant, would not meet the 15-day period provisions and that an arrangement (although the terms were disputed at the CCH) was made between counsel to extend the time on the exchange of several documents. The carrier's attorney also indicated that he had been delayed in getting the records because of not knowing the dates of the injuries. In any event, the hearing officer found due diligence and found good cause for the untimely exchange and admitted the particular records and documents. Admission and exclusion of evidence is reviewed on an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 960822, decided June 11, 1996. From our review of the records and the circumstances presented to the hearing officer on the issue, we cannot conclude that an abuse of discretion has been established for the admission of the questioned evidence.

The claimant urges error in the hearing officer's determination that the claimant's travel to Dr. B was not “reasonable or necessary” to obtain appropriate and necessary medical care, citing Texas Workers' Compensation Commission Appeal No. 990862, decided June 7, 1999. The hearing officer did not conclude that decision was dispositive in the current case. Certainly, the issue of whether travel is reasonably necessary under the particular circumstances is generally a factual matter for the fact finder to determine. Texas Workers' Compensation Commission Appeal No. 980649, decided May 13, 1998. Rule 134.6(a)(1) sets forth the guidance for travel expenses and their determination. In Appeal 990862, *supra*, the Appeals Panel reversed and rendered a decision where the hearing

officer denied reimbursement upon finding the travel was not reasonable and necessary. While there is language in that case indicating that where a carrier does not dispute travel at the time travel was undertaken the carrier would apparently waive into liability, the factual basis of that case is clearly distinguishable from the case under review. Of importance in that case was the fact that the hearing officer's findings did not include a finding that appropriate medical treatment was available within a 20-mile area, whereas there is a specific finding in the case under review and it is supported by the claimant's testimony of having successfully treated with such doctor. There are also other significant factual distinctions between the cases. In Appeal 990862, the carrier had sent the claimant to a doctor well beyond 20 miles when he reported the injury and it was only later that he changed doctors also beyond 20 miles. The carrier in that case also ultimately determined to accept compensability of the claimant's injury. In the case under review, the claimant went to Dr. B, for whatever reasons, before even reporting an injury to anyone, and the carrier, within 3 to 4 days of the report of injury, disputed the claim in its entirety and has continued to do so. Even if such situation would spark a waiver for not immediately disputing the travel, this was not a situation where the carrier was notified of an injury, sent the claimant to its doctor (well outside a 20-mile distance), and the claimant subsequently chose a treating doctor. We do not find Appeal 990862 dispositive here and conclude that there is a sufficient factual basis to sustain the hearing officer's findings and conclusions on this issue.

Finding sufficient evidence to support the findings, conclusions, and decision of the hearing officer and no reversible legal error, we affirm the decision and order.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge