

APPEAL NO. 991724

On July 20, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN § 401.001 *et seq.* (1989 Act). The issue at the CCH was whether respondent's (claimant) temporal mandibular joint (TMJ) condition is a result of his compensable injury sustained on \_\_\_\_\_. Appellant (self-insured) requests that we reverse the hearing officer's decision that claimant's TMJ condition is a result of his \_\_\_\_\_, compensable injury and render a decision in its favor or, in the alternative, remand the case to the hearing officer. Claimant requests affirmance.

DECISION

Affirmed.

According to medical reports, on \_\_\_\_\_, claimant was sitting in the cab of a truck that was being unloaded when the truck lurched and caused him to strike his head on top of the cab. The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_. Claimant testified that he reported facial and jaw pain to his doctors; however, those complaints do not appear to be documented in the medical records until March 1998. Claimant's initial treating doctor, Dr. V, diagnosed claimant as having paresthesia and back spasm and reported that he was at maximum medical improvement (MMI) on January 22, 1998. Dr. V referred claimant to Dr. D, who diagnosed claimant as having a left C5 radiculopathy related to his work injury of October 21st and wrote that claimant had a multitude of other complaints that are impossible to neurologically tie in to his work-related problem. Dr. P saw claimant in March 1998 and diagnosed claimant as having left C5 radiculopathy. Dr. K wrote in May 1998 that he examined claimant as the designated doctor and he reported that claimant reached MMI on May 20, 1998, with a six percent impairment rating (IR) for a specific disorder of the cervical spine. In July 1998, Dr. K amended his report to reflect a 10% IR for a specific disorder of the cervical spine and for left upper extremity impairment.

Medical records reflect complaints of facial and jaw pain in March 1998. An April 1998 progress note, apparently from a dentist to whom Dr. V referred claimant, states a diagnosis of probable TMJ. Claimant changed treating doctors to Dr. B around May 1998. Dr. B disagreed with the MMI date and IR reported by Dr. K in May 1998. Dr. B wrote in June 1998 that he disagreed with the eight percent IR Dr. O assigned claimant in April 1998, because that IR was only for loss of cervical range of motion, and that he disagreed with the IR assigned by Dr. K. Dr. B wrote that the appropriate IR is 26%, but did not mention claimant's TMJ dysfunction in the IR. In July 1998, Dr. Y performed a neurological evaluation of claimant and diagnosed claimant as having neck pain with radiation to the left upper extremity due to his work injury of \_\_\_\_\_.

Dr. B wrote in September 1998 that he believes that claimant's TMJ dysfunction is due to claimant's injury of \_\_\_\_\_, and explained how striking the top of the head on the

roof of the cab would cause the lower part of the jaw to jam upward and cause compression of the TMJ. Dr. B wrote that the mechanism of injury is one that would cause TMJ injury, and that, in the absence of any other documented TMJ injury or problem, "I can state that the TMJ dysfunction is directly related to the work-related injury."

Dr. H, D.D.S., reviewed claimant's medical records at carrier's request and opined that claimant's TMJ condition is not related to claimant's work accident, primarily because of the delay in reporting TMJ symptoms in the medical reports.

Dr. W, D.D.S., examined claimant in March 1999 and diagnosed claimant as having, among other things, capsulitis left TMJ, which, in his opinion, was the result of, or was aggravated by, the trauma claimant sustained in October 1997 when he hit the top of his head against the truck cab.

Claimant had the burden to prove the extent of his compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. In Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the worker are to be considered.

The hearing officer made findings of fact and determined that claimant's TMJ condition is a result of his \_\_\_\_\_, compensable injury. There is conflicting evidence regarding whether claimant's TMJ condition is a result of his compensable injury. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

---

Elaine M. Chaney  
Appeals Judge