APPEAL NO. 991749

On July 15, 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). With respect to the issues at the CCH, the hearing officer decided that respondent's (claimant) compensable injury of _____, extends to her cervical spine and includes her headaches, and that claimant had disability from the compensable injury of _____, from February 2, 1999, through the date of the CCH, July 15, 1999. Appellant (self-insured) requests that the hearing officer's decision on both issues be reversed and that a decision be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

Claimant worked in the kitchen of self-insured's school. She said that the ice maker in the school's kitchen is like a deep freezer with a heavy lid and that on _____ (all dates are in 1999 unless otherwise noted), as she was getting ice out of the ice maker, the lid of the ice maker slammed down, hitting her on her forehead, knocking her head back, and pushing her neck back. She said that she has had headaches and neck pain since that accident. Her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated February 19th states that her forehead was affected in the accident of February 1st. The parties stipulated that claimant sustained a compensable injury on _____. Claimant said that she went to the hospital on February 1st after her accident, that x-rays were taken of her head, and that she was prescribed pain medication. Claimant said that she attempted to return to work on February 9th, but was unable to work. She said that, except for her attempt to return to work on February 9th, she has not worked since her accident of February 1st because of head and neck pain.

Claimant went to Dr. L for treatment of her February 1st injury and on February 8th, Dr. L gave a tentative diagnosis of closed head injury/post traumatic cephalgia and cervical spine strain. Dr. L prescribed pain medication and physical therapy and noted that claimant could return to full-time work on February 9th. Dr. L referred claimant to Dr. M for a neurological evaluation and Dr. M wrote that an electroencephalogram done on February 9th was normal. Dr. M gave a preliminary diagnosis of persistent daily headaches, possibly secondary to a closed head injury, and neck pain secondary to a cervical strain. A radiologist reported that x-rays of claimant's cervical spine done on February 8th showed straightening of the cervical spine, which, he wrote, may be related to muscle spasm, and that x-rays of claimant's skull were normal. A radiologist reported that a CT scan of claimant's brain done on February 18th showed some calcification and he recommended an MRI. An MRI of claimant's brain done on March 25th was reported as a normal study. On March 1st, Dr. L noted that claimant had been under his care for injuries sustained on February 1st and that claimant had been unable to work since her injury. Dr. L wrote in June that he had last seen claimant on March 1st, that he had erroneously stated in one of

his reports that claimant was able to work, that that was incorrect, and that claimant was unable to work from the time of her February 1st injury through the last time he saw her on March 1st.

Claimant changed treating doctors to Dr. E, D.C., who has been treating her since March 9th. Dr. E's records reflect that claimant has complained to him of neck pain and headaches and that Dr. E has noted muscle spasms, trigger points, tenderness, and reduced motion in the cervical area. Dr. E has issued a series of work-status reports from March 9th through July 9th in which it is stated that, due to the extent of claimant's injuries and her response to treatment, it is necessary for claimant to be excused from work.

Claimant had the burden to prove the extent of her 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. Claimant also had the burden to prove that she had disability as defined by the 1989 Act. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage."

The hearing officer made findings of fact and decided that claimant's compensable injury of _____, extends to her cervical spine and includes her headaches, and that, because of the compensable injury of _____, claimant has had disability from February 2, 1999, through the date of the CCH, July 15, 1999. Self-insured contends that claimant suffered only a minor bump on the head and that the hearing officer's findings, conclusions, and decision are not supported by the evidence and are against the preponderance of the evidence.

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 of the hearing officer 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:

_____
Susan M. Kelley
Appeals Judge

_____
Alan C. Ernst
Appeals Judge