APPEAL NO. 991875

This appeal is brought 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 29, 1999. He (hearing officer) determined that the appellant's (claimant) compensable injury of _____, does not extend to his bilateral legs, cervical and thoracic spine, and chest. The claimant appealed; stated that the Decision and Order of the hearing officer had wrong dates in it; urged that the hearing officer erred in not adding the issue of whether the respondent (carrier) timely contested compensability of the injury to both of his legs, cervical and thoracic spine, and chest; urged that the determination that his compensable injury does not extend to those body parts is wrong; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. An order to correct a clerical error was issued and changed the date of the compensable injury to _____. The carrier replied, noted that the date of the injury had been corrected, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

We first address the hearing officer's refusal to add the issue of timely contest of compensability by the carrier. Apparently, two prior CCHs concerning the claimant's injury were held. One CCH was held on August 31, 1998, and the hearing officer who conducted that hearing determined that the claimant sustained a compensable injury, but only pages 1, 3, and 5 of the Decision and Order are in the record. In a letter to a third hearing officer dated April 1, 1999, the ombudsman, who assisted the claimant at the CCH that is the subject of the appeal before us, wrote:

> On behalf of [claimant], I would like to request a motion to add an issue.
>
> After review of the file and the Benefit Review Officer's report, in preparing for the upcoming [CCH] I would like to add the issue of timely dispute of extent of the injury. The Carrier did not dispute the extent of the cervical, thoracic and chest based on a prior CCH which was held on August 31, 1998, during that hearing the compensability of the claim was adjudicated. In the Statement of the Evidence and discussion the Claimant maintained "that as a result of this incident he sustained injuries to his shoulders, chest, neck, back and legs." (Claimant is withdrawing the extent of the legs at this time.) Therefore, I feel that the Carrier had written notice of the extent issue at the latest August 31, 1998, and that they didn't dispute any of the above referenced parts within 60 days.

The motion to add the issue was again raised at the CCH on July 29, 1999. The attorney representing the carrier stated that the hearing officer to which the letter is addressed denied the motion to add the issue at a prior CCH. The hearing officer denied the motion. He stated that the Appeals Panel had held that a carrier's position at the benefit review

conference (BRC) was sufficient to contest the compensability of a claimed injury; that he considered the carrier's position that the claimant's injury did not extend to his shoulders, chest, neck, back, and legs presented in a previous CCH to be sufficient to meet the requirement of a contest of compensability of those body parts by the carrier; and that he denied the motion to add the issue. The Appeals Panel has held that a contest of compensability made at a BRC and stated in writing in a BRC report is sufficient to be a written contest of compensability. The hearing officer issued a written Decision and Order after the prior CCH. The letter of the ombudsman states the claimant's position. The claimant did not establish good cause for adding the issue. The hearing officer did not err in not adding the issue.

We now address the determination that the claimant's compensable injury does not extend to his bilateral legs, cervical and thoracic spine, and chest. The claimant testified that he injured himself pulling on a cable with his left arm on _____; that he felt a pop in his left shoulder; that both shoulders, back of head, chest, and mid and low back hurt; that he went to an emergency room (ER) on February 2, 1998; that he told the people in the ER about his left arm and right shoulder; that an adjuster asked him questions on February 5, 1998; that he told the adjuster that his shoulders and chest hurt; that he may not have told people about his neck and back because his shoulders were hurting so much; that he was in a motor vehicle accident in 1995; and that he did not injure his neck or back in 1995. He said that he went to Dr. H, a chiropractor, on February 20, 1998; that he told Dr. H that his shoulders, neck, and back hurt; and that Dr. H treated those areas. Records of Dr. H are consistent with that testimony. The claimant stated that Dr. S, a chiropractor, treated him with massage therapy and electrical stimulation and that another doctor prescribed pain medication and muscle relaxers. On March 18, 1999, the ombudsman who assisted the claimant wrote to Dr. S asking if in his opinion the claimant's lumbar, thoracic, and cervical spine; chest; and legs are part of the claimant's original injury or if the injury is a producing cause of the claimant's problems in those areas. In a letter dated March 19, 1999, Dr. S responded that it was his expert opinion that the injuries to the cervical spine, upper thoracic spine, and chest are within a reasonable medical probability causally related to the work-related injury on _____; that the claimant was trying to hold a large object from falling onto him while he was sitting on a forklift; that if there was enough force to tear the muscles and tendons in his shoulders, there was enough force to damage soft tissues of the neck, upper back, and chest; and that the origin and insertion of numerous muscles of the upper body are interconnected with the shoulders.

The burden is on the claimant to prove by a preponderance of the evidence the extent of his injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's

testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. In his Decision and Order, the hearing officer stated that the claimant was not persuasive that the injury extends beyond the shoulders previously determined to be compensable. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant's compensable injury does not extend to his bilateral legs, cervical and thoracic spine, and chest is not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the appealed determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Alan C. Ernst
Appeals Judge