

APPEAL NO. 991948

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 13, 1999, a hearing was held. He (the hearing officer) determined that appellant's (claimant) compensable injury of (current date of injury), did not include injury to the neck and low back. Claimant asserts that the determination is against the great weight and preponderance of the evidence, stating that it is "believable" and "understandable" that claimant's focus for a period of time after the injury was on the knee and elbow injuries. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant did trim work on trailers while working for (employer). She testified that she tripped and fell at work on (current date of injury), falling forward onto her left hand, then onto her left elbow, then her left knee, and left hip. She was taken to an emergency room on the same day; she was noted to have left hand pain but no fracture was found.

During December she was also noted to have elbow and knee pain; there is no issue in this case in regard to the left knee, the left elbow, or the left hand.

While claimant's appeal states that she did not testify that her neck and back did not hurt until _____, claimant did testify that she had no pain in her back or neck initially and further testified that the back and neck did not start hurting for two to three weeks after the fall; she then was asked if they were painful by Christmas or after the first of the year, to which she replied that they became painful after the first of the year. She also said that she had no back and neck pain on _____, when she received physical therapy. Finally, she testified that she did have back and neck pain on _____, when she saw Dr. F but did not relate this to him. She indicated that on _____, she saw Dr. WE and asked him if her fall of (current date of injury), could cause back and neck pain, to which, she said, he replied that it probably would not.

Claimant agreed that she had a prior fall on (1st date of injury), in which she also hurt her left hand, left elbow, and left knee. She said, "I don't believe so" in answer to whether she had hurt her neck and low back in the August fall. She said that after the August injury she was working at light duty.

In February 1999, claimant changed treating doctors to Dr. J, D.C. His notes reflect neck and low back pain. Dr. J in July 1999 said that it was "probable" that claimant "twisted as she braced herself for the impact of the fall" which injured her neck and low back. However, an EMG in April 1999 was normal and Dr. G said there was no evidence of

cervical radiculopathy, cubital tunnel syndrome, carpal tunnel syndrome, or peripheral neuropathy.

When claimant saw Dr. S on behalf of the carrier in early April 1999, he noted that claimant said her back and neck were injured in the (1st date of injury) "initial injury" and that they "flared-up" after the (current date of injury) fall. He did find muscle spasm in the shoulder area and appears to state that both her lumbar and cervical areas are strained/sprained. On the other hand, when claimant saw Dr. VE, on March 23, 1999, she complained only about her elbow and knee.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The issue in this case, concerning whether certain body parts not immediately painful after an accident may be part of the injury even though pain and treatment began a period of time later, is one of fact for the hearing officer to determine. While a hearing officer may find that an injury arising months or even a year after an injury may be part of the compensable injury, he is not required to make such an affirmative determination; he may certainly determine that a claimant complained most about the worst injury sustained and may not be treated for a secondary injury for some period of time; however, he does not have to accept that such a sequence occurred, especially when a claimant says the body parts in question were not painful for several weeks after the injury.

See Texas Workers' Compensation Commission Appeal No. 93086, decided March 17, 1993, which did not rule out an injury to a particular body part when there was no complaint for up to a year--in which case the admitted delay in onset of pain could have dated from the (1st date of injury) fall just as it could have dated from the (current date of injury) fall, especially with Dr. S's report indicating claimant's assertion that she injured her back and neck during the "initial injury." The hearing officer was not required by this evidence to find that claimant sustained any injury to her back and neck from the (current date of injury) fall.

The hearing officer's determination is sufficiently supported by the evidence. As such it will not be disturbed on appeal.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge