

APPEAL NO. 991983

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 August 23, 1999. The issues at the CCH were whether appellant's (claimant) compensable injury of _____, included a disc bulge at C5-6, whether the respondent (self-insured) timely contested compensability, and whether the claimant had disability from the injury sustained on _____. The timely contest issue was resolved by stipulation and the hearing officer determined that the claimant's compensable injury of _____, did not include a disc bulge at C5-6, and that the claimant did not have disability from the injury sustained on _____. The claimant has appealed, urging that the evidence supports her position that the herniated cervical disc was causally related to her injury of _____, and that she subsequently had disability as a result of the cervical injury. Self-insured urges that the overwhelming weight of the credible evidence supports the decision of the hearing officer and that the hearing officer correctly applied the law.

DECISION

Affirmed.

The decision and order of the hearing officer sets forth fairly and adequately the evidence in this case and it will only be briefly outlined here. The claimant sustained a compensable injury to her elbow on _____, when she opened a heavy glass door and felt a pull on her left side. She reported the matter and saw Dr. R, who diagnosed a strain of the ligamentous elements of the elbow. She continued working and was released from care and, following two no shows for appointments, the case was closed in February 1998. She testified that in April 1998 she began to experience headaches and neck pain not related to any new incident. Since they became worse, she sought treatment from Dr. M in July 1998. A medical report of July 6, 1998, indicates that claimant complained of "neck pain x four days" and that she did not know how she hurt it. Claimant subsequently had an MRI in November 1998 which showed a small left paracentral disc herniation at C5-6, and she began treating with Dr. T, who states in a letter dated April 21, 1999, that it is her opinion that the claimant's "work injury either directly caused the disc bulge or aggravated a previously asymptomatic disc bulge." Claimant continued to work until April 1999. An August 9, 1999, letter from Dr. R stated that, in relying on the history given and his clinical experience, it was more likely than not that there is a causal connection between the injury of _____, and the current herniation, noting that it was impossible to prove one way or the other.

The medical records were sent by the self-insured to Dr. W for review and opinion. Dr. W stated that after his review:

I cannot relate her neck problems at all with the alleged injury in _____ of _____. An injury does not have to occur for a person to get a herniated cervical disc. In my opinion, there is just no medical documentation that

would lead me to believe that [claimant's] injury by opening a glass door is related in any way to the herniated disc she has to the cervical area.

The claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated December 16, 1998, shows the injury date of _____, and lists left elbow as the body part affected and that the nature of the injury was "pulled elbow, instant pain." A statement from her supervisor indicates that in December 1998, the claimant stated that she thought her neck pain might be related to her left elbow injury since she could not think of any other reason or injury to cause her neck pain.

The hearing officer, considering the circumstances surrounding the claimed neck injury and the delayed onset of symptoms, did not find the statements of Dr. T and Dr. R convincing and obviously gave greater weight to the opinion expressed by Dr. W concerning the lack of a causal relation between the incident of _____, and the current cervical condition. In sum, the hearing officer did not feel the claimant had met her burden of proving a compensable cervical injury. Thus, he also determined that the claimant did not have disability. Clearly, the burden was on the claimant. Texas Workers' Compensation Commission Appeal No. 950190, decided March 21, 1995. Where, as here, there is conflict and inconsistency in the evidence presented, it is the hearing officer's responsibility to resolve such conflicts and inconsistencies and arrive at findings of fact. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). Only were we to conclude, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb his finding or reverse his decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge