

APPEAL NO. 000070

On December 14, 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) cervical spine is part of her compensable injury of _____. The hearing officer decided that claimant's cervical spine is part of her compensable injury of _____. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor, or that the case be remanded to the hearing officer. Claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

Claimant testified that on _____, she slipped on oil at work and landed flat on her back on the concrete floor with her right leg bent under her. The parties stipulated that claimant sustained a compensable injury to her low back and right knee on _____. Claimant said that after she fell at work, her right knee was hurting but that she did not feel neck pain at that time. She said that when she fell, she hit her neck, back, and shoulders, and that she injured her neck and back. Claimant was taken to a hospital emergency room (ER) after the accident where she was diagnosed as having a right knee contusion. She said that she did not complain about neck pain at the ER. Claimant went to Dr. H on January 25, 1999, and he diagnosed claimant as having a back contusion and a sprained right knee with a contusion. Claimant said that she did not complain to Dr. H about neck pain but that when she saw Dr. H her entire back hurt and she could not turn her head. Claimant said that when she went to Dr. G on February 8, 1999, she had neck complaints. In his February 8th report, Dr. G diagnosed claimant as having a cervical sprain, acute muscle spasm with cervical degenerative disc disease, and a lumbar strain. Dr. G referred claimant for physical therapy and the therapist noted complaints of cervical and lumbar pain. In March 1999, Dr. G wrote that claimant has some migratory pain at the base of her cervical spine. Dr. G wrote in September 1999 that claimant "still has cervical degenerative disc disease which she likely injured at the time of her fall" and that claimant "has some degenerative disc changes and the fact that she has superimposed trauma on it should be rather evident by her clinical examination and the fact that she is getting periodic numbness in the upper extremities."

Claimant had the burden to prove the extent of her compensable injury. The hearing officer found that, in addition to her other injuries, claimant also injured her neck (cervical area) when she slipped and fell on an oily concrete floor on _____, and concluded that the cervical spine is part of the compensable injury claimant sustained on _____. Carrier contends that claimant only has "migratory" neck pain and that that is not compensable. While Dr. G noted migratory pain, he also diagnosed claimant as having a cervical sprain and superimposed trauma on her degenerative disc changes. Carrier also

contends that claimant failed to prove a causal connection between her claimed neck injury and her fall at work because there was not a prompt onset of symptoms, citing Texas Workers' Compensation Commission Appeal No. 92108, decided May 8, 1992. Appeal No. 92108 is clearly distinguishable because the claimant in that case did not seek any medical treatment for five months after the claimed injury.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 if its treatment, upon the general health and body of the worker are to be considered. As the finder 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. 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).

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge