

APPEAL NO. 000146

On December 21, 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 hearing officer resolved the disputed issues by deciding that appellant's (claimant) compensable injury does not extend to include the cervical, thoracic, and lumbar areas or the diagnosed depression and that claimant had disability as a result of the injury sustained on _____, from July 6, 1998, through August 2, 1999. Claimant requests that the hearing officer's decision on the extent-of-injury issue be reversed and that a decision be rendered that her compensable injury extends to include the cervical, thoracic, and lumbar areas and the diagnosed depression. Respondent (carrier) requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision on the disability issue.

DECISION

Affirmed.

Claimant testified that on _____, a machine that wraps newspapers became jammed and when she stuck her left arm into the machine to get the bundle out, her left arm became stuck, she pulled her arm out of the machine using a lot of force, and a large piece of metal from the machine fell on her left arm. The parties stipulated that claimant sustained a compensable injury on _____. Claimant said that after the accident she felt pain in her left arm and shoulder and in the entire left side of her body, from her neck down to her foot, and that after the injury she has been depressed. Claimant has been examined by numerous doctors, including, among others, Dr. B, D.C., her treating doctor, who gave testimony favorable to claimant's position on the extent-of-injury issue, and by Dr. H, who examined claimant at the request of the Texas Workers' Compensation Commission and who reported that claimant's work injury is limited to her left forearm and that it was hard to relate the work injury to any injury to the neck, and who later reported that the accident could have caused some strain in the neck and shoulder. A cervical MRI done in 1999 showed some abnormalities and an EMG done in 1999 showed C6 radiculopathy. In 1999, Dr. S diagnosed claimant as having depression secondary to her left shoulder and arm pain. The claimant had the burden of proof on the extent-of-injury issue. The hearing officer noted in her decision that the evidence clearly supports an injury to claimant's left shoulder and arm. The hearing officer provides a fair summary of the evidence in her decision in which she discusses and resolves conflicts in the evidence noted therein. The hearing officer made findings of fact on the extent-of-injury issue and concluded and decided that the compensable injury does not extend to include the cervical, thoracic, and lumbar areas or the diagnosed depression. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer is responsible for resolving conflicts in the evidence, for determining the weight to be given to the evidence, and for determining what facts have been established from the evidence presented. We conclude that the hearing officer's findings,

conclusion, and decision on the extent-of-injury issue are supported by sufficient evidence and are 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:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge