

APPEAL NO. 000183

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 January 5, 2000. The issue at the CCH was whether the appellant's (claimant) compensable injury of _____, was the producing cause of the claimant's left hand sprain with pain after _____. The hearing officer determined the compensable injury of _____, is not a producing cause of the claimant's left wrist condition after _____. The claimant appeals, urging that she did not sustain a new injury on _____; that the preponderance of the evidence showed that the _____ injury was a producing cause of her current problems; and that the _____ incident would not have resulted in a problem had it not been for the already existing injury and, thus, the carrier did not sustain its burden of proving the _____ injury to be the sole cause of the claimant's current condition. The claimant asks that the decision be reversed. Respondent (carrier) urges that there is sufficient evidence to support the findings and conclusions of the hearing officer; that the claimant did not prove the _____ injury was the cause of her current condition; that sole cause is an inferential rebuttal issue; and that the carrier showed a subsequent injury merely disproving an essential element of the claimant's burden, that is, causation between the current condition and the _____ injury. The carrier asks that the decision be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury to her wrist on _____, when she picked up a bag containing quarts of oil and felt a "pop," followed by pain in her left wrist. She subsequently had two surgeries on her left hand; reached maximum medical improvement on December 12, 1994; and was assessed a five percent impairment rating. She continued working with the employer until terminated in February 1998 for unrelated reasons and states that her wrist never returned to normal following her injury and that she would have periodic flare-ups. She testified that she had a nonwork-related incident on _____, when she was riding in an automobile when she placed her left hand on the console between the seats, turned sideways to look behind her, turned back around, and felt a lot of pain in her left wrist. She went to an emergency room, x-rays were taken, and she was told she had sprained her wrist from placing weight on the heel of her left hand. She put a brace on her wrist that evening. She states it got better for a while and then it got worse. She saw Dr. S who wanted a CT scan but it was not approved. He diagnosed left wrist osteoarthritis. She was subsequently seen by Dr. H who was appointed by the Texas Workers' Compensation Commission and also saw Dr. HA on behalf of the carrier. Dr. H indicates in a report that the _____ incident "basically resulted in a hyperextension type situation with the left wrist . . ." and that "I have concluded that this is an exacerbation of her symptoms in the left wrist, as a result of the injury she sustained at work on _____."

It was brought out that the claimant last received treatment for her _____ wrist injury in January 1995 and had not seen any doctor for her wrist since, although, she testified, she has some periodic, minor problems with her hand not requiring medical treatment. She indicated she continued to perform her regular job without problems until she was terminated in February 1998. The carrier introduced medical records from Dr. HA and a peer review doctor, Dr. B. Dr. HA indicates in a September 10, 1999, letter regarding the relatedness of her wrist pain specifically to the _____ injury that "[t]he patient clearly had a non-work related injury in _____ or _____ of _____ which appears to be the precipitating reason that her wrist became aggravated. This was not work related to my understanding. I believe her ongoing wrist pain is essentially an aggravation or new injury as a result of these more recent activities." Dr. H also indicated his belief that the _____ event would not have resulted in any particular problem had it not been for the injury of _____, but that the _____ injury must be treated as a new injury. Dr. B states that there is no evidence of orthopedic pathology following the earlier injuries which should result in symptoms or susceptibility to reinjury in _____. Therefore, Dr. B states, "her current symptoms are the result of her _____ injury."

The hearing officer found from the evidence before him that the claimant had no medical treatment after January 1995, that the medical treatment after the incident of _____ was after a new injury to her left wrist, and that the _____ incident was the sole cause of her current left wrist problems. Clearly, there was a degree of conflict in the evidence before him, particularly in the medical evidence and opinions; however, this was a matter for the hearing officer to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Section 410.165(a). In his discussion of the evidence, the hearing officer concluded that the claimant had not established by a preponderance of the credible evidence that her current left wrist problems were causally related to the injury in _____. In cases of this nature where there is an earlier compensable injury followed by a subsequent separate incident or injury, the claimant is first required to prove that the current condition is causally related to the compensable injury and the carrier is not required to rely on sole cause as a defense but can rely on the lack of proof of causation. Texas Workers' Compensation Commission Appeal No. 951418, decided October 5, 1995; Texas Workers' Compensation Commission Appeal No. 93143, decided April 9, 1993. See also Texas Workers' Compensation Commission Appeal No. 971727, decided October 17, 1997. In the case under review, the hearing officer did not believe the claimant established causation from the _____ injury by a preponderance of the credible evidence and further found the _____ injury was the sole cause of the current condition. We do not address lifetime medical benefits for the _____ injury if future medical treatment becomes reasonably necessary for and as a result of the _____ injury. Given the lengthy period of no medical treatment from January 1995 until after the incident on _____; the circumstances of the _____, incident; and the medical opinions, particularly of Dr. B, there was a sufficient evidentiary basis to support the hearing officer's findings and conclusions. Texas Workers' Compensation Commission Appeal No. 960466, decided April 17, 1996; Texas Workers' Compensation

Commission Appeal No. 951092, decided August 18, 1995. While different inferences could possibly be reached from the evidence, this is not a sound basis to disturb the factual findings of the hearing officer. From our review of the evidence, we cannot conclude 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. 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

Judy L. Stephens
Appeals Judge