

APPEAL NO. 000198

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 1, 1999. With respect to the sole issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury to her cervical spine on _____. In its appeal, the appellant (self-insured) asserts that the hearing officer's determination that the claimant sustained a compensable injury is against the great weight of the evidence and requests that we reverse the hearing officer's decision and render a new decision in its favor. In her response to the self-insured's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was working in a toll booth in an airport parking lot. She stated that one of the tickets dropped and that as she was bending over to pick it up, she fell off the stool on which she was sitting. The claimant further testified that as she was getting up, she hit her head on a metal hook in the door, which caused a bruise on the left side of her head above her eye at her hairline. She stated that she was dizzy after the incident; that she went to her supervisor's office to tell him what had happened; that she rested for a short time in his office; and that then she completed her shift. The claimant stated that she continued to work after the incident until July 1998, but that she had headaches and neck pain that went down her arms and into her hands. At that time, she quit working because of the ongoing problems in her neck and hands. The claimant filed a claim for carpal tunnel syndrome (CTS), with a _____, date of injury, for which the self-insured has accepted liability. She maintained that she had not had any problems with her neck, arms or hands prior to the fall at work on _____.

On July 28, 1998, the claimant had a cervical CT scan, which revealed "mild primary (congenital) spinal canal stenosis from C3 to C7"; "a moderate-sized central and right-sided caudally directed disc protrusion at C4-5 significantly accentuating the primary stenosis"; "a small central and right-sided disc protrusion at C5-6 and C6-7"; and "a mild degree of spondylosis" at C5-6 and C6-7. In a report dated August 14, 1998, Dr. P stated that the claimant had abnormal cervical EMG testing that was "consistent with chronic bilateral C5-6 level radiculopathy." An October 7, 1998, cervical MRI confirmed "mild primary (congenital) spinal canal stenosis from C3 to C7." In addition, the MRI showed a "broad-based central disk protrusion and a bulging of the annulus at C6-7, resulting in a moderate spinal stenosis and a minimal cord compression"; "an angular-shaped central and right-sided disc protrusion at C4-5," with "mild cord compression on the right"; and "a bulging of the annulus at C3-4 and to a lesser extent at C5-6 accentuating the primary stenosis at these levels."

In a report dated January 8, 1999, Dr. T stated:

I believe this patient had a pre-existing spinal stenosis which was caused to become symptomatic when she fell out of the booth on _____. She was aware at that time only of the blow to her head and difficulties with her left arm and wrist. She did not at first associate the symptoms that she was having in the left upper extremity, the headaches or the pain in the upper back with the injury that occurred in _____. I believe she has what is known as a "double crush syndrome," in which a neck injury resulting in some compression of the cervical nerve roots makes the patient more susceptible to entrapment of the peripheral nerves derivative from these roots, as in this patient her [CTS], which is borne out by the nerve conduction studies. So my diagnosis is cervical neuropathy and left median nerve entrapment of the wrist.

In a report dated February 15, 1999, Dr. S, a Texas Workers' Compensation Commission-required medical examination doctor, opined that the claimant's neck condition, primary congenital cervical spondylosis, "is the result of a non-work related condition." However, he further stated:

In view that she had no previous complaints, again based only on the facts that we have I feel that we need to assume that the fall of _____ was the causation of her complaints.

Causation requires a precipitating event and as you can see in all probability the precipitating event which has been documented is the fall in her toll booth on _____.

Dr. S opined that the claimant's cervical complaints "are due to an aggravation of the above pre-existing condition." Dr. S concluded:

Aggravation is not only to have pain, but worsening, exacerbation or acceleration of a pre-existing condition caused by a work related injury, again this is in all probability what we have with this lady.

In an April 12, 1999, letter, Dr. S stated "I do not feel that the claimant sustained an injury on _____ according to the definition of injury," noting that "I felt her condition was pre-existing. . . ." In addition, Dr. S stated that the claimant did not sustain "an aggravation of a pre-existing condition in her fall of _____." Rather, Dr. S opined that "it was a pre-existing problem and probably the injury caused a flare-up which is periods of pain with symptoms only without aggravation."

In a November 16, 1998, letter, Dr. H, who conducted a records review for the self-insured, opined that the claimant did not sustain a work-related cervical injury. Dr. H concluded that the claimant has a condition "that has appeared as the patient has aged superimposed on pre-existing primary (congenital) cervical spine stenosis." The self-insured also introduced a letter from Dr. D, a treating doctor, which provides:

I have reviewed [Dr. H's] comments on [claimant's] case. I do agree with him in terms of questioning whether this is work related or not. She does have primary congenital stenosis. If it is work-related, it is not a specific trauma event, but rather, an accumulative problem superimposed on her basic disease process.

The hearing officer determined that the claimant sustained a compensable injury to her cervical spine in the fall at work on _____. The carrier asserts that the hearing officer's determination in that regard is against the great weight of the evidence. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In this instance, as noted above, the evidence was conflicting as to whether the claimant's fall at work caused an aggravation injury. Dr. T opined that it did, while Dr. S gave conflicting opinions on the issue, and Drs. H and D opined that the fall did not cause the claimant's cervical injury. In addition, the claimant testified that the fall caused a cervical injury, emphasizing that she did not have any problems or symptoms prior to the fall. It was the hearing officer's responsibility as the fact finder to resolve the conflicts in the evidence and to determine what facts had been established. He did so by deciding to credit the evidence demonstrating that the claimant had sustained her burden of proving the causal connection between the incident at work and her cervical injury and he was privileged to do so. Our review of the record does not reveal that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge