

APPEAL NO. 000200

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 28, 1999, a contested case hearing was held. With regard to the issues before her, the hearing officer found that the appellant's (claimant) compensable injury of _____, does not extend to the cervical area. Claimant appeals two findings of fact and a conclusion of law and argues that the preponderance of the evidence shows that the compensable injury extends to the cervical area. The respondent (self-insured) contends that the findings and conclusion complained of are supported by sufficient evidence and urges that the decision be affirmed.

DECISION

Affirmed.

The claimant testified that he felt a "pop" in his shoulder on _____, when he lifted a post out of a hole. He stated that he did not and has not experienced any pain in his cervical area. He continued to work although he states he could not raise his arm above his head. Sometime in June he fell from a ladder at home while painting. It was after this that he stopped working. He subsequently saw a Dr. K who in a report dated July 7, 1998, states that the claimant complained of "shoulder pain which began two months ago while painting when he fell off a ladder and grabbed hold of the house with his left arm." He diagnosed a probable rotator cuff tear in the left shoulder. Claimant subsequently had surgery on his shoulder on January 22, 1999, and states that he felt good for about a month and then he started having pain. He subsequently saw a Dr. G who administered a shoulder injection which brought temporary relief. Claimant then changed doctors to Dr. H, who treated him with therapy and stimulations, and opines that a diagnosed cervical injury is connected to the _____, injury. Because of continuing pain, claimant was referred to Dr. D, an orthopedic surgeon, who diagnosed synovitis left shoulder and tear glenoid labrum left shoulder. He subsequently referred the claimant for a nerve conduction and "DSEP" study which revealed an impression of "evidence consistent with a left carpal tunnel syndrome, manifested by a prolongation of left median sensory wrist latency versus radial sensory wrist latency at equal distance." A subsequent MRI of the cervical area showed at the C6-7 level "3mm right posterior herniation mildly indents the sac." An EMG of the cervical area on August 13, 1999, performed by Dr. K indicated a normal electromyography of the left upper extremity. Dr. D opines that the cervical injury is related to the _____, incident.

A peer review of the medical records by Dr. L, an orthopedic surgeon, lists his impression of "[s]tatus post left shoulder strain with glenoid labrum tear and status post arthroscopic debridement of the left shoulder with resection of the left distal clavical." Dr. L states that "[t]he complaints of neck pain and radicular symptoms, in my opinion, are not related to the compensable injury."

The hearing officer found that the doctors relied on Dr. K's report in linking the cervical areas to the compensable injury but that no medical report from Dr. K set out a cervical injury, and that the cervical problems are not a result, and do not naturally flow, from the compensable injury of _____. Clearly, there was conflict in the medical evidence and opinions before the hearing officer regarding the causal relationship between the shoulder injury of _____, and the cervical condition. Resolving such conflicts in the medical evidence as with all evidentiary conflicts, is a matter for the hearing officer. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Section 410.165(a). The burden to prove that the injury of _____, extended to the cervical area was on the claimant. Texas Workers' Compensation Commission Appeal No. 951418, decided October 5, 1995. Here, there was evidence that the claimant did not experience cervical pain on or after _____; that he continued working; that he had a fall from a ladder; that he subsequently sought medical treatment and was diagnosed with a shoulder injury for which he subsequently underwent surgery; that in a medical report the surgery was considered unsuccessful; that the claimant was subsequently diagnosed with further shoulder problems; and that a peer review report stated that the cervical problems are not related to the compensable injury. While there was evidence to the contrary, we cannot conclude that there was insufficient evidence to support the findings and conclusion of the hearing officer or that her decision is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge