

APPEAL NO. 000312

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 January 13, 2000. It is undisputed that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_. The hearing officer determined that the claimant's arthrosis is a natural result of and is causally related to his compensable injury. The appellant (carrier) appealed, stated evidence favorable to its position that the claimant's arthrosis is not a natural result of the compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer. The appeal file does not contain a response from the claimant.

DECISION

We affirm.

The claimant testified that he worked as a maintenance mechanic for about 40 to 45 years; that on \_\_\_\_\_, he hit his right thumb and wrist with a hammer; that prior to that date, he had no problems with his right hand or wrist; that he has no problems with his left hand or wrist; that the employer's nurse sent him to Dr. W; that Dr. W referred him to Dr. DDT, a hand specialist; and that Dr. DDT referred him to Dr. K, a hand specialist. The claimant's supervisor testified that before the injury he did not notice that the claimant had problems with his right hand, the claimant did not complain about his right hand, and the claimant was able to perform his work. He said that after the injury the claimant tried to work with one hand.

In a report dated August 17, 1999, Dr. DDT said that his impression is this is probably a direct blow contusion superimposed upon an element of arthrosis; that he would treat the claimant with a splint and anti-inflammatory medication; and that he would refer the claimant to Dr. K, a hand and wrist surgeon. In another report with the same date, Dr. DDT stated that x-rays demonstrate decreased joint space in the right thumb basal joint/CMC joint. In a report dated September 2, 1999, Dr. K said that x-rays dated August 17, 1999, demonstrate stage II carpal metacarpal osteoarthritis and some radial subluxation of the interval and wrote:

We had a long discussion about how quiescent arthritis can be activated by a traumatic incident. I believe that is the case here since the patient had no prior symptomatology and was able to work.

In a report dated September 22, 1999, Dr. K stated that the claimant was having problems, that "ligament reconstruction tendon interposition arthroplasty" was discussed, and that the claimant was wanting to undergo the procedure.

The carrier sent the claimant's medical records to Dr. DT. In a letter dated September 26, 1999, Dr. DT wrote:

After evaluating the provided medical records, noting the original mechanism of injury, symptoms, examination findings and ancillary test results, it is this reviewer's impression that the injuries sustained on the aforementioned date of injury, should be considered a contusion to the right hand, including the basilar thumb area and the right wrist. The patient appears to have had a significant degree of pre-existing arthrosis at the affected right carpal metacarpal joint. It appears to the reviewer that the injuries are completely separate. That is to say, that the injuries sustained while working on \_\_\_\_\_ appears [sic] to have been the type of injury that typically resolves spontaneously with or without active medical treatment within a 6 week period. It does not appear to this reviewer that the injury to the thumb/wrist area at all significantly affected the evident markedly pre-existing and essentially completely pre-existing arthrosis located at the patient's CMC joint. The arthrosis at the CMC joint is the type of condition that is chronic related to years of working utilizing the thumb for either activities of daily living and/or potential work related activities. . . . The injury itself sustained on \_\_\_\_\_ does not appear to have altered the evident pre-existent chronic condition with regards to this patient's right thumb.

In a report dated October 13, 1999, Dr. K wrote:

[Dr. DT] has determined, not based on an examination of the patient but based on record review, that the patient is not eligible for benefits under Workers' Compensation for arthroplasty to the carpal metacarpal joint. The patient's history is inconsistent with symptomatology to this region prior to the injury and I have seen several times in the past an injury exacerbating a pre-existing arthritis causing a once quiescent condition to become symptomatic. I believe this to be the case in [claimant's] wrist. Regardless, my recommendation to alleviate pain in this region of the patient's wrist would be a ligament reconstruction tendon interposition arthroplasty.

In a report dated October 7, 1999, Dr. G, the designated doctor, reported that the claimant had not reached maximum medical improvement (MMI) because interventions, including surgery and physical therapy, had not been performed and that he would be glad to reassess MMI and perform an impairment rating after the interventions had been performed. In a letter dated November 18, 1999, Dr. G stated that he reviewed the report of Dr. DT and that he did not change his opinion dated October 7, 1999. In a second opinion report dated November 12, 1999, Dr. H said that he reviewed x-rays and notes of Dr. K and Dr. DT; that the osteoarthritis is chronic, longstanding, and completely unrelated to possible injury occurring on \_\_\_\_\_; that he doubts that the patient would have been asymptomatic prior to the injury on \_\_\_\_\_; and that he considers the need for surgery to be due to the preexisting arthritis and not something that occurred on \_\_\_\_\_.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge