

APPEAL NO. 000357

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 31, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____, and whether she had disability. The hearing officer determined that the claimant sustained a compensable cervical injury and had disability from May 17, 1999, through the date of the CCH. Appellant (carrier) appeals, urging that the hearing officer may have changed the claimant's theory of recovery, that the evidence showed that the claimant had a degenerative condition and not a compensable occupational disease, and that the claimant's cervical condition was an ordinary disease of life. Claimant responds that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

Claimant, a 26-year employee of the employer, testified that she sustained an injury to her cervical area on _____, from repetitive lifting of items as a stock status checker. She states on the day of injury the pallets were piled up and she worked lifting stock of various weights the whole day. She states that her arm became numb and was tingling that evening and she reported the matter the next day. She was sent to a clinic that day and subsequently saw her own doctor, Dr. H, but was not taken off work and continued to work until May 17, 1999, when she was taken off work by a referral doctor, Dr. A. She acknowledged, and medical records from Dr. H indicate, that she had prior shoulder and hand to neck pain and was treated by Dr. H (a history of suspected carpal tunnel syndrome (CTS) is noted); however, she stated she has never had herniated discs before. She stated that the symptoms and pain were different from April 20th and that her arm went numb and was tingling. In any event, MRI and EMG studies were ordered and the MRI showed "changes of degenerative disc disease" and cervical spondylosis at C5-6 and C6-7, and disc protrusions at those levels. The EMG discounted CTS, but indicated probable C6 plus/minus C7 radiculopathy involving the right upper extremity. She was referred to Dr. AC, who states in his records the impression that claimant has herniated nucleus pulposus (HNP) at C5-6 and C6-7 on the right with radiculopathy. He recommended surgery with which the claimant agreed. An independent medical examination report by Dr. P dated October 13, 1999, indicates chronic C6-7 polyradiculopathy, secondary to C5-6 and C6-7 degenerative disc/ spondylosis. Dr. P states "[i]t appears this patient was injured at work and has significant degenerative disk disease and spondylosis at two levels with chronic radiculopathy" and that surgery would be reasonable. Carrier in its opening statement indicated it did not deny that the claimant needs surgery but that it was not a result of a compensable injury. Claimant stated she contended it was work related from the beginning but that her medical bills were apparently paid through group health and that she drew

short-term and long-term disability. She indicated some of the doctors did not accept workers' compensation patients.

Regarding the carrier's complaint that the hearing officer changed theories, we note that in her discussion the hearing officer indicated that the "parties actually litigated whether the claimant sustained a single event compensable injury on _____ as a result of repetitive work activities that occurred on _____. " Although we do not understand the particular significance of this statement, the hearing officer entered a finding that "[o]n _____, as a result of heavy repetitive lifting activities at work, Claimant injured her cervical spine." Texas Workers' Compensation Commission Appeal No. 992343, decided December 6, 1999. While there was certainly some conflict and inconsistency in the evidence as to whether the claimant sustained a compensable injury, this was a factual issue 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). The claimant testified that the symptoms she experienced on _____, were different from what she had experienced before although she acknowledged she had been treated earlier for arm and shoulder pain. She also indicated she had never had disc HNPs before and that the medical reports from the MRI and Dr. AC showed that to be her condition at this time although she also had degenerative conditions. After listing his impression and assessment, Dr. P also notes in his report that it appears this patient was injured at work. This evidence, we conclude, was sufficient to support the finding of a compensable injury on _____, from the claimant's work activity on that date. While the evidence may give rise to other possible inferences concerning the claimant's cervical condition, this is not a sound basis to reverse a factual finding of the hearing officer. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). This is so where the finding made is not 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).

The carrier's appeal of disability hinged on the lack of a compensable injury having been sustained. Since we affirm the finding of a compensable injury, and conclude that there is sufficient evidence to support the finding of disability from May 17, 1999, to the date of the CCH, we affirm the decision and order of the hearing officer.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge