

APPEAL NO. 000377

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 19, 2000. The issue at the CCH was whether the appellant's (claimant) cervical condition was a result of the compensable injury sustained on or about _____. The hearing officer determined that the claimant's cervical condition is not a result of the compensable injury. The claimant appeals, challenging the sufficiency of the evidence to support the factual findings underlying the dispositive conclusion of law and requesting that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant testified that on _____, he was lifting a ladder at work, lost his balance when the ladder moved to the right and as he swung it around he heard a "pop" and felt pain in his upper back; that the next day he had much pain in his back and shoulder areas but did not feel pain in his neck; that his treatment at the (clinic) included chiropractic treatment; that a chiropractor would "snap" and "pop" all his spinal bones including his neck but did not explain why he (the chiropractor) worked on his neck; and that about six months later, after having changed treating doctors to Dr. S, his neck began to feel very bad, including locking up and popping.

Claimant further testified that he had a communication problem with the clinic; that when he complained at the clinic of both low back pain and pain in the upper back, he was intending the latter term to include his neck; that he was unfamiliar with the names of the regions of the spine; that he kept telling them the pain was also higher up but the clinic did a poor job of documentation; and that he left the clinic for Dr. S because the clinic was unprofessional. Claimant said that, although he had some neck pain, he did not know he had a problem with his cervical spine until he commenced treatment with Dr. S.

Claimant also stated that his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which states the body part affected by his injury as "lower back, waist, upper middle back," was filled out by his attorney's paralegal although he acknowledged having read and signed the form on October 6, 1997. He said that his Employee's Request to Change Treating Doctors (TWCC-53), in which he requested to change treating doctors from Dr. G to Dr. S and which stated the type of injury as "back," was also filled out by the paralegal although he did read and sign it on January 21, 1998.

Dr. S's February 12, 1998, initial narrative report, after briefly recounting claimant's treatment by Dr. G, apparently for the lumbar spine, states that claimant says his pain "is

more marked in the cervical/thoracic paraspinal areas and medial to the left"; that claimant has full range of motion in the cervical spine and arms; and that claimant "pinpoints tenderness to the interscapular area on the left." In his Initial Medical Report (TWCC-61) and Specific and Subsequent Medical Report (TWCC-64) forms, Dr. S stated the diagnosis as brachial neuritis or radiculitis. Dr. S reported on April 16, 1999, that when he first evaluated claimant in February 1998, he learned that claimant's main problems were directed to the upper part of the thoracic area; that these symptoms are compatible with cervical radiculopathy; that the MRI of May 18, 1998, showed a possible annular tear at C4-5 on the left, evidence of bulges at C4-5 and C5-6, and a suggestion of a bulge at C3-4; and that the July 30, 1998, discogram showed fissures at C3-4, C4-5, and C5-6. In his June 24, 1999, report, Dr. S stated that he felt there is a direct relationship between the injury of September 30, 1997, and the initiation of symptoms in claimant's cervical spine and that he has evidence of abnormalities as seen on the MRI and the discogram.

In addition to the dispositive conclusion of law, claimant challenges the hearing officer's factual findings that claimant did not have an onset of neck pain immediately following the lifting of the ladder at work on _____; that he understood where his neck was and did not indicate to the clinic or to his initial doctors that he had neck pain from the compensable injury; that claimant felt some pain in October 1997 after his neck was popped and there was insufficient evidence that there was an injury from this incident or that there was continuing pain; that claimant completed a diagram in December 1997 showing his areas of pain and radiation and, though there was some indication of radiation upwards, it did not encompass the cervical area; that claimant's first complaints of neck pain began about five to six months after the date of injury and he was clearly complaining of neck pain when he first was evaluated by Dr. S on February 17, 1998; that the neck pain noted by Dr. S in February 1998 indicated pain in claimant's neck, not radicular pain; that claimant did not sustain an injury to his neck in the course and scope of his employment on _____; and that claimant's neck pain and problems did not naturally flow from the compensable injury sustained on _____.

Claimant had the burden to prove by a preponderance of the evidence that his cervical condition resulted from his compensable injury of _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer noted not only the length of time between the date of injury and documented complaint of neck pain, but also some of the inconsistencies in claimant's testimony. In so doing, the hearing officer weighed the evidence and fulfilled her role as the fact finder.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge