

APPEAL NO. 000415

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 25, 2000. The hearing officer determined that the appellant's (claimant) _____, compensable injury did not include the cervical spine and that the claimant did not have disability. The claimant appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, who is 24 years old, worked as a dishwasher. He has a history of epileptic seizures since he was 12. On _____, while carrying dishes he slipped on the wet floor and fell, striking his head on a table or pipe with a resulting laceration above the right eye. He also lost consciousness. While there may have been some question raised at the CCH about whether the seizure caused the fall or the fall caused the seizure, there was no contention that the claimant's epilepsy was aggravated by the fall. The carrier accepted liability only for a laceration injury.

Emergency medical technicians were called to the scene. They found the claimant prone and unconscious, but responsive to stimuli. He was rolled into a supine position with neck stabilization, placed on a backboard and transported to a hospital emergency room (ER). Handwritten ER records of initial treatment could be read to reflect no neck difficulty or that the neck was negative for symptoms or pathology. In any case, the focus of the treatment was neurological. The claimant testified that he was knocked unconscious in the fall and woke up in the hospital. He said that about a week later he felt neck pain and did not receive any medical attention between April 1 and April 29, 1999, when he saw Dr. B. In an Initial Medical Report (TWCC-61) of this visit, Dr. B noted complaints and headache and severe neck pain which, according to the claimant, he had been experiencing since the fall. Dr. B's examination of the neck showed "extremely tender paraspinal muscle with tenderness felt into the trapezius muscles bilaterally." He also found decreased range of motion secondary to muscle spasms. His diagnosis was cervical radiculitis. Dr. B has maintained through subsequent visits that the fall was the cause of this neck condition. X-rays showed no fracture or listhesis, but revealed osteophytosis and facet arthropathies with slight narrowing of the neural foramina.

Dr. S examined the claimant on September 24, 1999, and reviewed his medical history at the request of the carrier. He noted that the claimant told him he was seizure-free for approximately three years before the incident on _____, but hospital records

reflect seizure activity as late as February 1999. He concluded there was "no evidence to indicate a neck injury as a result of the incident on _____," and that "the incident of _____ did not produce an objective abnormality. . . ."

The hearing officer considered this evidence and determined that the claimant "did not suffer an injury to his cervical area in an incident at work on _____." Finding of Fact No. 4. The claimant appeals this determination, arguing that Dr. S's opinion was not dispositive of the issue because his examination occurred six months after the incident and that his own evidence and testimony supported his assertion of a compensable cervical spine injury.

The claimant had the burden of proving he sustained a cervical spine injury in the incident of _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Normally such a claimed injury could be proved by his testimony alone, but the fact that the claimant lost consciousness in the fall raised some question about the credibility of his opinion as to causation. In any case, the hearing officer could also rely on the medical evidence presented. This reflected a normal examination of the cervical spine in the ER and a delay of almost a month before seeking medical care for a claimed neck injury. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In his role as fact finder, the hearing officer could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. The evidence in this case was subject to varying inferences. The hearing officer simply was not persuaded by the claimant that he injured his cervical spine in the fall on _____. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Applying this standard of review to the record of this case, we find the evidence deemed credible and persuasive by the hearing officer sufficient to support his determination that the compensable injury did not extend to the cervical spine.

The position of the claimant at the CCH was that the condition of his cervical spine was the only reason he was claiming disability. Having affirmed the finding that the compensable injury did not extend to the cervical spine, we also affirm the finding that the claimant did not have disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge