APPEAL NO. 000583

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 February 9, 2000. In response to the issue at the CCH, the hearing officer determined that the respondent (claimant) sustained a compensable injury to her Acervical area in addition to the lumbar and thoracic areas.@ Appellant (carrier) appeals on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer=s decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the scope of claimant=s _____, compensable injury included her cervical spine. Carrier asserts that: (1) there is no evidence that the described mechanism of injury could have caused a neck injury; (2) claimant was not credible; (3) the hearing officer should have believed the evidence from Dr. O; (4) claimant=s doctors did not consider the mechanism of injury or the fact that claimant had prior injuries, in expressing medical opinions; and (5) the MRI report showed only a bulge and not a herniation.

The hearing officer summarized the facts in the decision and order. It was undisputed that carrier accepted a compensable injury to claimant=s Alumbar and thoracic spine.@ Briefly, claimant testified that she was Aslumped down@ and bent over, turning and twisting, bagging straws when she began to feel back pain. Claimant said she asked a supervisor to change the work area, but the supervisor refused. Claimant testified that she was given a back brace to wear and that she was Aswitched@ to another job. She said she injured her neck because she was slumped over and using her arm to fill the bag, that she now has neck pain, swelling, and headaches, and she can turn her neck only so far. Medical reports first documented complaints of neck pain on May 11, 1999. A June 1999 MRI report states that claimant may have a herniated disc at C5-6 and that Athere was impingement on the spinal cord.@ In June 1999, Dr. I noted that claimant had neck pain radiating into her left upper extremity. In a July 1999 report, Dr. P stated that claimant has a large disc herniation in her neck and that this is work related. At the CCH, Dr. O testified that he did not feel that claimant injured her neck while working with the straws and that her MRI report indicated arthritic degeneration and osteophytes and not a cervical herniation from a work injury. The hearing officer determined that claimant sustained a cervical herniated disc injury on _____.[1]

The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26).

[1]The date of injury is variously listed as _____ and _____.

The scope of an injury thus can encompass ancillary conditions which are connected to the injury. *See* Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92452, decided October 5, 1992. It is the claimant's burden to establish that the cervical problems were caused by her compensable injury of _____. The trier of fact judges the weight to be given expert medical testimony and resolves any conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We have reviewed the record and evidence regarding claimant's cervical problems and the compensable injury. The matters raised by carrier involved fact issues for the hearing officer to resolve. To the extent that the evidence was conflicting, that was a matter for the hearing officer as fact finder to resolve. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not substitute our judgment for that of the hearing officer because his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer=s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge