

APPEAL NO. 000606

On January 28, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that respondent=s (claimant) compensable injury extends to include injuries for right cubital tunnel syndrome and dyspnea. Appellant (carrier) requests that the hearing officer=s decision be reversed and that a decision be rendered in its favor. Claimant requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

It is undisputed that claimant sustained a compensable injury on _____, when he fell off the back of a moving farm tractor and was crammed between the tractor tire and the fender and was then crushed by the tractor tire. He said that the right side of his body was on the ground with the tractor tire resting on his left side. The parties stipulated that claimant sustained compensable injuries to his p ubic ramus, left clavicle, pelvis, sacrum, left ankle, left shoulder, left upper extremity, and lumbar area. Claimant has had multiple surgeries as a result of his injuries. Claimant had a preexisting condition of ankylosing spondylitis (AS). In a decision dated July 5, 1995, another hearing officer decided that claimant=s compensable injury of _____, aggravated and accelerated claimant=s AS condition. That decision was not appealed. An electrodiagnostic study done in 1998 showed right ulnar nerve dysfunction and claimant was subsequently diagnosed as having right cubital tunnel syndrome.

In 1999, claimant was diagnosed as having dyspnea. Dr. T reviewed claimant=s medical records at carrier=s request and testified that any exacerbation of claimant=s AS would have ceased within six to eight months of his injury, that claimant=s right cubital tunnel syndrome and dyspnea are a result of his AS, that claimant=s right cubital tunnel syndrome and dyspnea are not related to claimant=s compensable injury of _____, and that claimant would have right cubital tunnel syndrome and dyspnea from his AS even if he had not had the compensable injury of February 1993. Dr. B reviewed claimant=s medical records at carrier=s request and wrote in 1999 that claimant=s compensable injury would no longer be causing an on-going aggravation of claimant=s AS. Dr. G, claimant=s treating doctor, wrote in 1999 that he suspects that claimant=s dyspnea is related to decreased compliance to the chest wall secondary to AS which would have been facilitated by the inactivity caused by claimant=s accident and that claimant=s right cubital tunnel syndrome resulted from overuse of the right arm due to surgeries to the left side. Dr. G also noted that the right side of claimant=s body was involved in the accident. Dr. S, who has treated claimant upon referral from Dr. G, wrote in January 2000 that due to claimant=s work-related injury, claimant=s normal mobilizing therapy for his AS was curtailed and that resulted in a worsening of his condition with resulting decreased motion and function, as well as increasing his pulmonary problems, and that the injury to claimant=s left upper extremity caused claimant to increase the use of his right upper extremity and resulted in

overuse problems of the right upper extremity. Dr. SC, another referral doctor, wrote in 1999 that claimant's injuries to his pelvis, shoulder, and back limited his activity which allowed his AS to run rampant; that prior to his accident, claimant was a very active; that claimant is now plagued by significant pulmonary problems, muscle spasms, stiffness, and pain; and that these problems and the increase in the activity of his AS are directly attributable to his work-related injury.

Claimant had the burden of proof on the disputed issue. The hearing officer made 35 findings of fact, three of which are appealed by carrier. Carrier also appeals the hearing officer's conclusion that claimant's compensable injury extends to include injuries for his right cubital tunnel syndrome and dyspnea. We cannot conclude that the hearing officer erred as a matter of law in finding that Dr. B's opinion has been contradicted by the prior decision and order holding that the _____, injury aggravated and accelerated the claimant's AS. The hearing officer's finding that due to claimant's treatment for his compensable injuries, his normal mobilizing therapy was curtailed, resulting in decreased motion and function and increased pulmonary problems, is supported by sufficient evidence. The hearing officer did make a finding that the compensable left upper extremity injury resulted in overuse of the right upper extremity but we cannot conclude that overuse was the sole basis of the hearing officer's decision regarding claimant's right cubital tunnel syndrome given her other findings and her discussion in her Statement of the Evidence. While the hearing officer did not make a specific finding that claimant's dyspnea and right cubital tunnel syndrome naturally resulted from his compensable injury, her compensability determination is based on what she describes as an acceleration and enhancement of claimant's AS from his compensable injury. We cannot agree with carrier's contention that the hearing officer lacked jurisdiction to determine the disputed issue. The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established. As an appeals tribunal, the Appeals Panel is not a fact finder and 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 would support a different result. Texas Workers=Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge