

## APPEAL NO. 000660

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2000. The hearing officer determined that the (date of compensable injury) compensable injury of the respondent (claimant) extends to the cervical spine and also that the appellant (carrier) did timely contest compensability of the cervical injury. The carrier appeals the determination regarding extent of injury on sufficiency grounds. Claimant responds that the hearing officer=s determination regarding extent of injury is correct. Claimant did not mention the determination regarding carrier waiver in the document filed on appeal.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's compensable injury extended to his cervical spine. Carrier asserts that: (1) claimant had a prior neck injury in (date of prior injury), and ongoing neck problems thereafter; (2) claimant complained only of lower and upper back pain after his compensable injury; (3) there is no medical evidence that the compensable injury included claimant=s neck; and (4) the hearing officer Aexceeded her authority@ in determining that claimant had a cervical injury based on her interpretation of claimant=s MRI reports.

It is undisputed that claimant sustained a compensable back injury in (date of compensable injury). Claimant said he was injured in (date of compensable injury) when a load of freight fell on him, causing his body to hit the wall. Claimant said he felt pain in his back and between his shoulder blades at that time. Claimant said he did not have neck pain at the time, although pain drawings from a (date of compensable injury) emergency room record show low back pain, mid- back pain, and pain between the shoulder and neck area. Claimant said he continued to work after the injury, that he drove back to (city A), and that he then sought medical attention at a hospital. Claimant said the neck pain he had after his compensable injury is different from that he experienced with his prior injury, that it is severe pain, and that he now sometimes has numbness in his forearm and fingertips.

Claimant had sustained a prior compensable injury in (date of prior injury) when a heavy can fell on his head. Claimant said he went to the hospital after his prior injury, that he did not have any treatment thereafter, and that he returned to work. Apparently, cervical x-rays were taken at the time of the prior injury. Claimant said he had dull pain just below his neck that continued after that time, but that it was not as severe as the neck pain he felt after his compensable injury. Claimant said he had sought treatment for back and neck pain in September \_\_\_\_\_, shortly before the compensable injury.

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury and the scope or extent of the injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The scope of an injury 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. An aggravation of a previous condition or injury can rise to the level of a new injury. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. To be compensable, generally, an aggravation must be a new injury and not merely a transient increase in symptoms from an existing condition. Texas Workers' Compensation Commission Appeal No. 94107, decided March 10, 1994. See *a/so* Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994.

Existence and extent of injury are fact questions for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996. The hearing officer is the sole judge of the weight and credibility to be given to the evidence and the relevance and materiality to assign to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts 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 hearing officer may believe all, none, or any part of any witness's testimony and may properly decide what weight he should assign to the evidence before him. Campos.

In this case, the hearing officer weighed the evidence and determined that claimant's injury included his neck. This issue involved a fact question for the hearing officer, which she resolved. Appeal No. 951959, *supra*. The hearing officer could determine that claimant's injury included his neck based on his testimony alone, if the hearing officer found that testimony credible. Texas Workers' Compensation Commission Appeal No. There was medical evidence that claimant complained of worsened neck pain and upper extremity numbness after his compensable injury. Claimant said his cervical pain was much worse after the compensable injury. The hearing officer was entitled to consider the medical evidence, including the MRI reports, in considering claimant's condition and the cause of the condition. We note that, after some confusion about claimant's history, claimant's doctor indicated that he believed claimant's neck condition predated the compensable injury. However, the hearing officer could decide to believe all, none, or any part the evidence and decided what weight to give to the evidence. Campos, *supra*. After reviewing the evidence, we conclude that the hearing officer's determination regarding the scope of the injury is not so against the great weight and preponderance of the evidence as to be wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Elaine M. Chaney  
Appeals Judge