APPEAL NO. 000696

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 March 6, 2000. The issues at the CCH were whether the compensable (low back) injury sustained by the appellant (claimant) extends to include an injury to the cervical spine; whether the respondent (carrier) waived the right to contest the compensability of the claimed injury to the cervical spine; and the claimant=s impairment rating (IR). The hearing officer determined that the claimant=s compensable injury does not extend to include an injury to the cervical spine allegedly sustained during the physical therapy (PT); that carrier timely contested the compensability of the cervical spine and did not waive the right to contest its compensability; and that claimant=s IR was 36%. The claimant appeals, contending that his compensable injury does extend to his cervical spine and that his IR should be 49% as assigned by Dr. G. The carrier responds, urging affirmance. The hearing officer's decision regarding timely contest of compensability has not been appealed and has become final pursuant to Section 410.169 and will not be discussed further.

DECISION

Affirmed.

Claimant was employed as a "concrete glazer" and sustained a compensable low back injury on _____, while setting some concrete forms. Claimant saw a number of doctors and had spinal surgery in the form of a lumbar discectomy "with a fusion and Harrington Rod distraction" on March 14, 1997, by Dr. D. Claimant was subsequently placed in a PT program and eventually began receiving PT with (HS). Claimant testified that during PT, while lifting weights, "a little pop went off in his neck" and he had an immediate onset of neck pain radiating into his left arm. Claimant testified that he reported the incident and pain to Ms. O, the physical therapist in charge of the program, and to Dr. D. Considerable effort was made at the CCH to pinpoint when the weightlifting pop incident occurred, but claimant's testimony was generally vague and at odds with the documentation. This alleged event was narrowed down to some time between mid-August (when claimant's PT and work hardening began) and October 1997. (The hearing officer commented that it "occurred some time in late summer or fall of 1997.") Claimant testified that he had had no prior neck problems or cervical problems prior to beginning work hardening in PT; however, the medical records indicate otherwise.

In a report dated December 3, 1996 (some eight or nine months prior to the PT incident), Dr. D notes complaints of "hurting his neck," "tenderness in the cervical area" and states that claimant was seen in a hospital emergency room (ER) on November 14, 1996. X-rays were taken (no cervical MRI was ever performed) and Dr. D diagnosed degenerative cervical disc disease. Various PT notes indicate complaints of neck pain on August 5, 15, 21 and 22, 1997. In a memo regarding this matter, Ms. O stated:

> I found notes showing some complaint of neck pain on initial evaluation dated 08/05/97 and ongoing report of neck pain as therapy for his low back

> progressed. On 09/26/97 there is documentation of [claimant] reporting onset of neck and left arm pain and numbness starting previous night.
>
> There is no mention of any injury occurring whilst completing therapeutic activity.
>
> I do not recall any incident of injury to [claimant] during therapy and it is my customary practice to document any such occurrence.
>
> [Claimant] did receive therapy for his neck following orders from [Dr. D] dated 11/14/97, with a diagnosis of degenerative cervical disc.

Other discrepancies between claimant's testimony and the medical documentation is set out in the hearing officer's detailed Statement of the Evidence, which also contains the comment that the hearing officer did not find claimant's testimony credible regarding no neck problems prior to his PT.

Regarding the IR, Dr. G was the designated doctor. In his Report of Medical Evaluation (TWCC-69) and narrative report dated March 31, 1998, Dr. G certified maximum medical improvement on January 6, 1998 (which is unchallenged), and gave separate ratings for the lumbar and cervical conditions. Dr. G gave an IR of 36% for the lumbar condition only, an impairment of 21% for the cervical condition only and stated, "[c]ombining these two we get a total [IR] of 49%."

On the key issue of whether the compensable low back injury extends to the cervical spine, the hearing officer comments:

> Claimant has a long standing history or [sic] cervical degenerative disc disease unrelated to his compensable injury. The worsening of that condition was not a result of the compensable injury or treatment for the compensable injury and the cervical condition is not a part of the injury.

The hearing officer made findings consistent with that comment. Claimant's appeal simply asserts that he is still saying that the cervical injury was caused by the PT in the work hardening program. The Appeals Panel, in addressing allegations of further injury in PT or work hardening after a compensable injury, has frequently quoted from Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work.

We have also noted that whether a subsequent injury was caused by the compensable injury, or the proper and necessary treatment thereof, is generally a question of fact for the hearing officer to resolve. In this case, there is documentation of neck complaints as early as December 3, 1996 (which references a November 14 ER visit), which is contrary to claimant's testimony. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's decision on this issue is sufficiently supported by the evidence.

On the IR issue, the only medical report in evidence (regarding an IR) is that of Dr. G, who rates the injuries separately and then gives a combined rating. In that we are affirming the hearing officer's decision that the compensable injury does not extend to the cervical spine, we also affirm the hearing officer's decision that the IR is 36% based on the designated doctor's rating for the lumbar injury only.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens

Appeals Judge