

APPEAL NO. 000708

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 15, 2000. The hearing officer determined that the appellant-s (claimant) compensable injury of _____, does not extend to her cervical spine. The claimant appealed; contended that the question of whether the claimant sustained a neck injury was subsumed into the extent-of-injury question of whether the compensable injury extended to her cervical spine; and requested that the Appeals Panel reverse the decision of the hearing officer and remand for the hearing officer to determine whether there was a soft tissue injury or sprain/strain to the cervical area. The respondent (carrier) replied; urged that the hearing officer did not err in not changing the issue; argued that the question of a cervical injury is not subsumed in the issue reported as unresolved at the benefit review conference (BRC) of A[d]oes the compensable injury of _____ extends [sic] to the cervical spine?@, and requested that the Appeals Panel affirm the decision of the hearing officer.

DECISION

We affirm.

It is undisputed that the claimant slipped and fell and went to an emergency room (ER) on _____. ER records indicate that the claimant tripped and hit her right clavicle area, that an x-ray of the right shoulder did not show abnormality of the right shoulder, and that the diagnosis was a right shoulder strain. The claimant testified that she told the people in the ER that she injured her neck and does not know why the ER records do not reflect that she told them that. She stated that she answered an interrogatory by stating that she was not involved in any accidents or incidents in which she was injured in the last five years; that she was involved in an automobile accident in January 1999; that she injured her low back, not her neck, in that accident; and that she received a settlement for that accident. A record introduced by the carrier indicated that the claimant contended that she injured her neck, upper back, and shoulder in the automobile accident. A report of an MRI dated December 23, 1999, states that the claimant had a history of right-sided neck pain and a lump in the right side of the neck; that the soft tissues appeared to be normal and no mass was identified in the right side of the neck; and that there was a normal MRI scan of the cervical spine. Dr. W, who was called by the claimant, testified that the claimant-s cervical and thoracic muscles, not the claimant-s bones, were involved in the _____ injury. Dr. C was called by the carrier and testified that when he treated the claimant he did not find a lump on the right side of her neck, that a muscle that goes from the neck to the shoulder was tender, that there was no evidence of a cervical injury when he examined her, and that his billing diagnosis was shoulder pain. Both doctors used cervical syndrome and generally agreed that cervical syndrome means a collection of signs and symptoms without a specific diagnosis such as a disc problem or pulled muscle and does not necessarily indicate a cervical spine injury.

The record does not contain a response to the BRC report. Soon after the hearing was convened, the parties agreed on the issue as stated in the BRC report. After both sides had made closing statements, the claimant asked that the issue be changed by deleting "cervical spine" and inserting "neck." The carrier did not agree with the requested change and the hearing officer did not change the issue.

The Appeals Panel has held that strict application of rules pertaining to pleading need not be followed in disputes before the Texas Workers' Compensation Commission. Cervical is defined as pertaining to the neck. Spine is defined as the spinal column. Spinal is defined as pertaining to the spine or the vertebral column and as pertaining to the spinal cord functioning independently from the brain. Column is defined as an anatomical part in the form of a pillar-like structure, sometimes specifically for the gray column of the spinal cord. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 28th Edition. In the case before us, the dispute was litigated based on the agreed-upon issue. Based on the record before us, we do not agree that the issue of whether the claimant's compensable injury extended to the claimant's neck was subsumed in the agreed-upon issue of does the compensable injury extend to the cervical spine. Even though the sufficiency of the evidence to support the decision of the hearing officer was not specifically appealed, the record was reviewed to decide the appealed question and the evidence is sufficient to support the decision.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge