

## APPEAL NO. 000780

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 20, 2000. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The hearing officer determined that the claimant has degenerative cervical disc disease; that the claimant=s degenerative cervical disc disease existed prior to the time of her compensable injury on \_\_\_\_\_; that the claimant=s compensable injury did not aggravate her degenerative cervical disc disease; that the claimant has a mild posterior protrusion at C6-7; that the mild posterior protrusion at C6-7 was neither caused by nor aggravated by the compensable injury; that the cervical injury is not related to or caused by the compensable injury of \_\_\_\_\_; that the carrier disputed the compensability of the cervical injury in a timely manner and did not waive its right to contest compensability of the cervical injury; and that the claimant is not entitled to benefits arising out of the cervical injury. The claimant filed a lengthy appeal, stated her disagreement with the determinations of the hearing officer, provided detailed information favorable to her position, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The carrier responded, urged that the hearing officer properly applied the law to the facts and that the evidence is sufficient to support his decision, and requested that it be affirmed.

### DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury pushing up on a clothes rack that was jammed. The injury included a fractured rib. The claimant contended that her injury also included an injury to her cervical spine. The carrier contended that it did not. The Decision and Order of the hearing officer contains a five-page statement of the evidence that includes quotations from medical reports. Briefly, the claimant testified that when she saw doctors soon after the injury she told them about pain in her shoulders and neck. Early medical reports do not mention the neck, but a report dated August 31, 1998, does indicate that x-rays of the cervical and thoracic spine did not reveal fracture or dislocation. In a report dated December 21, 1998, Dr. A reported that the claimant said that she was having increasing pain and that something was horribly wrong with her arm, shoulder, neck, and low back. Dr. A recommended MRIs, they were delayed, the cervical MRI was performed on September 29, 1999, and it revealed degenerative disc disease with a mild posterior protrusion of the disc at C6-7. In December 1999 Dr. A wrote a "To Whom It May Concern" letter and stated that he believed that the pathology in her cervical spine was in direct relationship to her on-the-job injury. The copy of the letter in evidence does not have a stamp indicating when it was received by the carrier.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence.

Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers= Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). A medical witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers= Compensation Commission Appeal No. 961610, decided September 30, 1996. In his Decision and Order, the hearing officer explained why he found that it was more likely that the cervical condition was preexisting and was not aggravated by the compensable injury. He also explained why he did not find that certain medical documents were received by the carrier more than 60 days prior to the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) being filed and that if they were received at times to make the TWCC-21 untimely, they did not put the carrier on notice of a claimed injury to the cervical spine. In addition, in Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel held that in CCHs conducted on or after March 13, 2000, carriers were not required to dispute the extent of a compensable injury. An appeals level body is not a fact finder, and it 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. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That other factual determinations could have been made based upon the evidence is not a sufficient basis to overturn factual determinations of a hearing officer. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers= Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge