

APPEAL NO. 000781

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 16, 2000. The hearing officer determined that the appellant-s (claimant) compensable injury does not include left thoracic outlet syndrome (TOS), left carpal tunnel syndrome (CTS), or extend to the cervical area. The daimant appealed, arguing that the credible medical evidence is favorable to his claim of extent of his injury. The claimant points out that the hearing officer's discussion does not address his claimed neck injury. The claimant argues that the decision should be reversed because it is against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. The respondent (carrier) responds by reciting evidence in favor of the decision and pointing out the weaknesses in claimant's medical evidence.

DECISION

Affirmed based upon our standard of review.

The claimant was employed by (employer). Although inadvertently omitted from the decision, it was stipulated that he sustained a compensable injury on _____. The parties waived opening statement and the scope of the injury that was stipulated was accordingly not clear. However, the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed by the carrier disputed TOS and CTS and stated that the compensable injury for the claim "is to the left shoulder and low/lumbar back area as reported to the employer and initial treating doctor."

The claimant said that he tripped on a catwalk when an object came up behind him, and fell backwards, striking his shoulder on the railing and his back on the catwalk. He also grabbed the railing when he began to trip to keep from falling. He said he had bilateral shoulder pain but the right shoulder pain resolved eventually. He continued to have left extremity pain and tingling and difficulty with movement, and could not raise his arm up over his head. The accident happened on a Friday; claimant saw his family doctor, Dr. K, the following Monday.

However, there is in the record a medical report, from the same day as the injury, written by Dr. M, diagnosing an acute lumbar sprain and right shoulder strain. Dr. M recorded complaints of low back and right chest and shoulder pain. Dr. K's Initial Medical Report (TWCC-61) dated December 7, 1998, diagnosed a soft tissue injury. Referenced attachments to this report are not in evidence. The claimant said he was released back to light duty this day and returned to work the following day. The claimant said he last worked in February 1999, after working a period of light duty. The claimant's treating doctor at the time of the CCH was Dr. L. An MRI was conducted of the left shoulder on May 25, 1999, as recommended by Dr. L. This report found degenerative changes without a discrete tear. Claimant said he had never sought any treatment for his left shoulder or had problems prior to the accident.

The claimant went through a functional capacity evaluation (FCE) on February 19, 1999, which documented pain behaviors that appeared to be non-anatomical. The evaluator concluded that claimant could perform materials/handling skills at the low end of the medium-demand level. The claimant asserted during the CCH that no one ever discussed the results of this FCE with him.

Dr. L filed his TWCC-61 on March 10, 1999, and prescribed therapy. The ICD-9 diagnostic codes used on his medical reports indicate unspecified disorders of the bursae and tendons in the shoulder, brachial plexus lesions, myalgia and myositis (unspecified), and lumbosacral root lesions. The report briefly indicates a history of injury as "knocked off conveyor belt at work." Dr. L answered a deposition on written questions about the nature of claimant's injuries by indicating that some muscle stresses resulted from pulling on the rails, and that such pulling of the muscles impacted the nerve roots in the cervical and thoracic spine. He stated that claimant had developed adhesive capsulitis in his shoulder.

A designated doctor examined the claimant on July 20, 1999, and stated that he was at maximum medical improvement with a nine percent impairment rating. This was derived from lumbar and left shoulder impairment. The shoulder impairment was from limited range of motion (ROM). The designated doctor's understanding of the mechanism of injury was that claimant fell 75 feet from a catwalk.

Claimant said that he had been told by a referral doctor, Dr. A, he had symptoms consistent with TOS but no one ever explained to him what this was. Dr. A's October 11, 1999, report recorded a dramatic account of how the accident happened, in that claimant was "knocked off" a platform and was hanging and swinging by his arms. The claimant said that while Dr. A had sought a cervical MRI, he never explained to claimant what the purpose of this would be. The claimant said that he had "some" neck pain and stiffness, although no major pain. We note that the claimant essentially was unable to identify what his problem was and maintained that nothing had been fully explained to him as to the cause for his left shoulder pain and tingling. He also indicated at one point that his treating and referral doctors were not entirely sure what the problems with his shoulder were. The claimant was referred at one point for psychological evaluation of somatization of his injury.

The claimant was examined twice by a doctor for the carrier, Dr. S. Dr. S's first report of June 18, 1999, stated that claimant had non work-related degenerative tendinitis in the left shoulder. Dr. S said that claimant refused to cooperate with left ROM testing. Dr. S reported on February 4, 2000, that he did not believe it was medically probable that the claimant developed a brachial stretch injury or TOS.

Finally, Dr. H, a doctor for the carrier who reviewed medical reports, but did not examine the claimant, stated that Dr. A was the first doctor to raise many of the diagnoses attributed to claimant's left shoulder and neck. Dr. H stated his impression that the first injury involved low back and right shoulder pain which had resolved and that TOC, CTS, or "multiple etiologies" set forth by Dr. A are not causally related to the compensable injury.

It is troublesome that the carrier has accepted liability for a left shoulder injury and yet argues that varying diagnoses for that injury do not reflect part of that injury. Section 401.011(26) defines injury as follows:

"Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

Dr. S's belief that the left shoulder injury was degenerative and non work-related necessarily colors his opinions about the causal connection of TOC or CTS to that left shoulder injury. Likewise, Dr. H's opinion is premised upon his understanding that claimant's initial injury was to his back and right shoulder. The hearing officer seems to incorporate this reasoning as the basis for her decision as reflected by the following statement in the discussion:

The preponderance of the credible evidence shows that the cause of Claimant's left shoulder complaints is a degenerative condition in his left shoulder which is unrelated to his compensable injury.

The compensability of the left shoulder, per se, was not before the hearing officer. If claimant's left shoulder was only degenerative in nature from inception, that matter was not raised by the carrier, who accepted a left shoulder injury in its TWCC-21. The basic injury to the left shoulder having been accepted, the matter for the hearing officer to resolve was whether the left TOC, CTS, and cervical injury existed and were the natural result from the initial damage or harm.

We affirm the hearing officer's decision for the reason indicated in her decision: that the conditions asserted as part of the issue were not proven to her by a preponderance of the evidence to exist. She could consider that Dr. A's understanding of the accident that underlaid his opinion of possible diagnoses, with claimant dangling by both arms and swinging, was erroneous. She could also consider the comparative lack of objective evidence of the syndromes involved along with claimant's documented somatization tendency.

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, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. The facts set out in a medical record are not proof that a work-related injury in fact occurred.

Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

An appeals level body 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. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Accordingly, the decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

We cannot agree that the decision of the hearing officer is against the great weight and preponderance of the evidence and therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge