APPEAL NO. 000854

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 January 21, 2000, but was continued and held on March 17, 2000. The hearing officer determined that the appellant's (claimant) compensable injury does not include or extend to include an injury to the cervical area. The claimant appealed, expressing disagreement with this determination and citing evidence he believes supports his position. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as an auto mechanic. He testified that on _____, as he was removing a radiator, he felt pain in his arms and into his fingers. He first saw Dr. L on this date. The diagnosis was right shoulder sprain. No mention is made of neck pain in the report of this visit. Dr. L referred the claimant to Dr. H, who eventually diagnosed a right rotator cuff tear and performed a right shoulder acromioplasty on August 22, 1996. The arm and shoulder pain, according to the claimant, did not subside. On January 12, 1997, Dr. H reported a phone call from the claimant about shoulder soreness, but did not see him again until August 17, 1998. Dr. H referred the claimant to Dr. V for EMG and nerve conduction studies, which Dr. V concluded showed evidence of left lower cervical radiculopathy. He recommended a cervical MRI. This was done on November 12, 1998, and was read as showing no evidence of disc herniation, stenosis or foraminal narrowing. There was evidence of "slight straightening of the upper cervical curve which could, in part be due to some degree of paraspinal muscle spasm" and of "very early segmental spondylosis . . . at C4-5."

The claimant saw Dr. C on April 4, 1999. He diagnosed cervical spondylosis and neck sprain and mentions in his report that the claimant felt a pop in his neck at the time of the original accident--a history that did not appear in the records up to this time. He further stated that he was unable to explain the symptomatology and noticed some functional overlay. On July 23, 1999, Dr. C wrote that "[i]t is quite possible that this patient could of [sic] sustained a neck injury due to pulling action. It is not uncommon for patients with neck injuries to complain of shoulder pain and vice versa . . . . So within reasonable medical probability it is probable that this patient sustained a neck injury by a thrust on the arm." The claimant, at the CCH, referred to the spondylosis as a "pinched nerve" and attributes it and a neck sprain to the original injury.

Dr. P performed a records review at the request of the carrier and concluded in a report of December 29, 1999, that there is no causal relationship between the right shoulder injury and the spondylosis, which he considered an ordinary disease of life.

The claimant had the burden of proving that his compensable injury included an injury to the "cervical area." Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact for the hearing officer to decide. In her decision and order she commented that the early medical examinations disclosed no cervical complaints and that these symptoms did not appear in the records "until almost two years after the date of injury." She concluded that the claimant failed to meet his burden of proving a compensable cervical spine injury. In his appeal, the claimant takes issue with several findings of fact and seeks to further explain them. He also asserts that Dr. C's letter of July 23, 1999, was in terms of medical probability not possibility as the hearing officer found. Ultimately, the claimant takes exception to the dispositive weight the hearing officer gave to Dr. P's report that the claimant's cervical condition was an ordinary disease of life.

The medical evidence in this case was in some conflict. Even in Dr. C's letter of July 23, 1999, he speaks of possibility and probability. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she could accept or reject, in whole or in part, any of the evidence in determining what facts had been established. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. In this case, she simply found Dr. P's opinion on the lack of causation more credible than other evidence, particularly that of Dr. C, in light of the length of time between the date of the injury and the first mention of cervical pain in the medical records. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determination that the compensable injury did not include or extend to the cervical spine or area.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge