APPEAL NO. 000950

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 30, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable neck injury on _____ (all dates are 1999 unless otherwise noted); that claimant did not sustain a compensable lumbar or shoulder injury on _____; and that claimant has had disability from August 11th through the date of the CCH due to her cervical injury. The appellant/cross-respondent (carrier), in a contingent appeal, appealed the hearing officer's findings regarding the mechanics of the injury and that claimant has disability. Carrier requests that we reverse those findings and render a decision in its favor. The claimant appealed, disputing the hearing officer's findings on the mechanics of the injury and also asserting that the medical evidence supported injuries to the shoulder and low back. Claimant requests that we reverse those findings and render a decision in claimant's favor. The carrier responded, urging affirmance of the findings appealed by claimant.

DECISION

Affirmed on all appealed issues.

Claimant was employed by (employer) as a "maintenance processor." Claimant testified how she was lifting a mail container off a shelf, that the container was heavier than expected, and how it caused her to "buckle over" causing the bin to almost touch the floor. Claimant contends that she injured her neck, shoulder, and low back in this incident. Claimant testified that she continued to work in pain until August 11th when she was no longer able to work. On that date, claimant sought treatment from Dr. B, who took her off work August 11th. The parties stipulated that claimant "sustained a compensable strain/sprain of the cervical spine on _____."

The hearing officer does a commendable job in summarizing the evidence, including claimant's testimony at the CCH, a recorded statement by claimant, and a written statement by claimant giving "slightly differing versions of the mechanism of the injury." The medical evidence includes 45 pages of records from Dr. B. In a report dated August 16th, Dr. B diagnoses cervical and lumbar sprains/strains, cervical and lumbar "IVD Displacement w/o Myelopathy" and muscle spasms. Dr. B prescribed different "modalities" for the different body parts three times a week. Although back pain is mentioned and treated, we do not disagree with the hearing officer's description and finding that, initially, claimant's primary (but not all) complaints dealt with the cervical area as recited in Dr. B's records. In addition to the lengthy reports in evidence are brief progress notes of claimant's visits beginning August 12th through September 16th, as well as several off-work requests.

Claimant was examined by Dr. F, a Texas Workers' Compensation Commission-appointed independent medical examination (IME) doctor who, in a report dated October

25th, noted initial complaints of back pain but, at the time of the examination, noted only complaints of continuing pain in the cervical spine area. Dr. F's impression was "cervical sprain, probable cervical disc disease, radiculopathy." Dr. F believed claimant could return to work, was at maximum medical improvement (MMI), had a zero percent impairment rating, and did not require further treatment. Dr. F, in answering a deposition by written questions, was of the opinion that claimant's cervical disc herniations "have no significance in terms of posterior nerve compression" and specifically answers "unknown" to questions about claimant's lumbar spine. Claimant was also examined by Dr. L, carrier's IME doctor, who, in a narrative report dated November 18th, references only the neck and left shoulder. In a deposition by written questions, Dr. L specifically opines that claimant does not have a low back injury and that claimant's back problems are not related to the compensable neck injury. Claimant was also examined by Dr. G, the designated doctor who, in a report dated January 6, 2000, noted complaints of cervical and lumbar pain and said claimant was not at MMI.

Statements in evidence from various coworkers comment on claimant's complaints of back pain and others only relate to the mail bin without commenting on the location of claimant's complaints of pain. The hearing officer, in her Statement of the Evidence, notes that none of the doctors "diagnosed any injury to Claimant's shoulder in spite of her complaints of pain" and that the "totality of the evidence . . . did not establish that [claimant] sustained a lumbar injury on _____." With regard to disability, the hearing officer comments:

> Carrier is correct in pointing out that the medical does not differentiate between Claimant's work abilities and the cervical versus the lumbar area. However, Claimant's complaints of pain have centered primarily on the cervical area. Treatment was given to both areas but relief was not really noted in either area. Claimant was taken off work on August 11, 1999 and to date she has not been released to return to work. Claimant established that she was unable to work from August 11, 1999 to the date of the hearing from the compensable neck injury.

Claimant, in her appeal, contends that she did complain of back pain to Dr. F and Dr. L and that the records of Dr. B "document injury to the neck and back and radiculopathy into the shoulder area." The evidence was conflicting and subject to differing inferences. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. 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). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

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

Dorian E. Ramirez
Appeals Judge