

APPEAL NO. 000977

On March 30, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that appellant's (claimant) compensable injury of _____, does not extend to his cervical region. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____. The issue before the hearing officer was whether the compensable injury of _____, extended to claimant's cervical area. Claimant testified that on _____, he was performing his job duties removing a 70-pound motor from a large air conditioning unit when the motor fell and hit him on his "right neck/shoulder area," that he injured his right shoulder and right hand, and that he has had neck pain ever since that injury. Claimant was initially treated by Dr. L. Dr. L noted in July 1998 that claimant was complaining of wrist and elbow pain. Dr. L wrote in March 1999 that in August 1998 claimant underwent a right carpal tunnel release, a right ulnar nerve transposition, and a right de Quervains's release; that he referred claimant to Dr. A for treatment of reflex sympathetic dystrophy; and that in December 1998 claimant had surgery on his right thumb and right wrist. Claimant said that he told Dr. L about his neck pain; however, it appears that Dr. L first mentions neck complaints in a June 1999 report. Dr. A wrote in October 1998 that claimant had complaints of right upper extremity pain and in December 1998 gave claimant right stellate ganglion blocks in his neck. Dr. G recommended approval of the blocks based on a high probability of reflex sympathetic dystrophy.

Dr. S examined claimant at carrier's request in March 1999 and Dr. S reported that claimant complained of right hand, wrist, elbow, and shoulder pain. Dr. S stated an impression of residual pain following the wrist and elbow surgeries and no evidence of reflex sympathetic dystrophy. Claimant was examined by Dr. J, the designated doctor, in April 1999 and Dr. J reported that on _____, the motor hit claimant's right shoulder region and he diagnosed claimant as having right carpal tunnel syndrome, right cubital tunnel syndrome, right wrist sprain, and clinical evidence of reflex sympathetic dystrophy and reported that claimant was not at maximum medical improvement (MMI). Dr. J noted that claimant complained of pain that appeared to be radiating from his neck down to his fifth finger and that claimant's pain may be consistent with a C7 neuritis. Dr. J noted that no documentation from Drs. L or A indicated a cervical spine injury but stated that the position of the motor and where it fell on claimant's shoulder can lead to cervical radiculitis and concurred with Dr. A's recommendation for a cervical MRI. In a July 1999 cervical MRI report, Dr. O stated an impression of congenital hyposegmentation of C4-5 with fusion of

the posterior elements, hypoplasia of the C4 and C5 vertebral bodies, mild disc bulge with spondylosis at C3-4, and minimal disc bulges at C5-6 and C6-7. Dr. L wrote in August 1999 that it is his opinion that claimant's current cervical symptoms are related to his injury of "_____ [sic]."

Claimant testified that he had a prior injury in _____ or _____ when an air conditioner motor fell on his head, that he had neck problems as a result of that injury, that he underwent chiropractic treatment for that injury for six months, and that he did not miss any time from work due to that injury. Medical records reflect that the prior injury occurred on _____. Claimant has apparently been off work since his _____, injury. In March 1999, Dr. A wrote that claimant needs an MRI of the cervical spine because he has a history of previous neck trauma and in April 1999 Dr. A explained that the neck injury he was speaking of "is the only one that he has sustained and that is the one of _____." Dr. A reviewed claimant's July 1999 cervical MRI in September 1999. Dr. ON recommended approval of cervical nerve root blocks in October 1999 in order to determine whether the neuropathic pain in the arm is central or peripheral in origin and opined that the 1996 injury is most likely unrelated to the 1998 injury. Dr. C wrote in October 1999 that there is no relationship between the 1996 injury and the cervical spine complaints. Dr. M, wrote in December 1999 that there is medical evidence to suggest that claimant has a cervical complaint that is causally related to the _____, injury and recommended approval of physical therapy for claimant's cervical spine and upper extremities.

Dr. J reexamined claimant in January 2000 and reported that claimant was still not at MMI; that cervical radiculitis on the right could not be ruled out; that in reviewing the history of the _____, injury, it is not unreasonable to factor in a contribution from the nerves of the neck; and that claimant's previous injury is not a factor in the case. Dr. B reviewed medical records, apparently at carrier's request, and he wrote in January 2000 that claimant's cervical spine complaints relate back to his injury of _____. Claimant changed treating doctors to Dr. OS, and Dr. OS reported in February 2000 that claimant still had pain in his neck, right arm, and right wrist, and that claimant was unable to work. Dr. OS referred claimant to Dr. T who, in February 2000, diagnosed claimant as having sympathetically mediated pain of the right upper extremity with positive response to stellate ganglion blocks in the past and cervical radiculitis, possibly of the C5-6 nerve roots. Dr. T recommended more stellate ganglion blocks and after those, nerve root blocks, possibly of the C5-6 nerve roots.

The hearing officer found that claimant did not sustain harm or damage to the physical structure of his neck on _____, in the course and scope of his employment and she concluded that the compensable injury of _____, does not extend to the claimant's cervical region. Although the hearing officer indicates in her decision that the most persuasive evidence is that claimant's cervical problems are not the result of his prior injury, she was not persuaded that the _____, injury included an injury to claimant's cervical region. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). We do not perceive that the hearing officer used an incorrect legal standard. Claimant had the burden to prove the extent of his compensable

injury. As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established by the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge