

APPEAL NO. 000990

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 10, 2000. With regard to the issues before her, the hearing officer determined that the tear of the right pectoralis major muscle is not a result of the trauma the appellant (claimant) sustained to the chest and shoulder areas on _____, and that respondent (carrier) timely contested compensability of the right pectoralis muscle injury. Claimant appeals, referencing certain medical reports showing a muscle tear, rather than a tumor or "mass," and contending that carrier did not timely contest compensability of the muscle tear, based on a theory that carrier received a copy of certain reports five days after the date on the report. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed in some capacity on a drilling rig. Claimant testified in some detail how on _____, he was struck on the hands and chest by a very heavy (estimates vary between 500 and 1,000 pounds) "rimmer." Although not stipulated nor specifically addressed, carrier agrees that "the claimant did have an injury, and it has been accepted," but at issue in this case is whether claimant had an injury to his chest and whether claimant's chest condition is a tumor or mass, unrelated to the accident, or a tear or lesion possibly related to the accident.

Claimant sought medical attention at the (clinic) on _____ (the day following the accident), where a history was taken and an examination performed. The tentative diagnosis was:

1. Rule out chest contusion.
2. Left shoulder strain, rule out fracture or dislocation.
3. Cervical Strain.
4. Thoracic strain.

Claimant was referred to various other doctors and hospitals. A clinic report of a May 22, 1998, visit notes "a tender poorly defined mass in the right anterior chest wall measuring 6-7 cm. This may be either a hematoma of the chest or a neoplasm tumor." Several doctors and the hearing officer refer to a CT scan performed on June 10, 1998, which noted "a 2x3 cm fatty mass in the right pectoralis muscle." An MRI performed on October 2, 1998, showed:

an irregular 3x1.8x2.8 cm fatty signal intensity intramuscular lesion within the right pectoralis muscle on the right with no abnormal signal seen on the inversion recovery images and no definite enhancement seen.

Claimant was referred to Dr. RS, who, in a report dated September 30, 1998, had an assessment of a cervical strain, “[p]ectoralis muscle rupture, right shoulder” and left shoulder pain. The report in evidence (Claimant's Exhibit No. 2) is unsigned and addressed to Dr. M at the clinic. A clinic Specific and Subsequent Medical Report (TWCC-64) dated October 23, 1998, includes a notation that “repair of the pectoralis major muscle” has been suggested, apparently by Dr. RS. This report is also unsigned and does not indicate that it was sent to anyone. Claimant relies on these two reports to give notice to carrier that he was claiming a chest muscle tear injury. Claimant, at the CCH, simply says that “as far as we understand, [clinic] had forwarded all these records to the [carrier's] adjustor.” Claimant presented no evidence on whether, in fact, the records were sent or mailed; who might have sent them; and when they might have been sent, but relies on a (misplaced) presumption that they were received five days after they were mailed and that they were mailed the same day they were dated. Carrier represented at the CCH that it did not receive these reports until they were exchanged at a benefit review conference on February 25, 1999. Carrier disputed a “right chest and chest mass condition” by a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on March 31, 1999. The hearing officer found that carrier had timely contested claimant's right chest and chest mass, which includes the right pectoralis major muscle, on March 31, 1999. We hold that finding and the hearing officer's decision on this issue supported by the evidence and affirm the hearing officer's decision on this issue. We would further note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and subsection (a) of Rule 124.3 do not apply to disputes of extent of injury. Rule 124.3(c) goes on to specify when such a notice of dispute of extent of injury must be filed.

Whether claimant's chest complaints were a “fatty mass,” tumor, lesion, or tear were subject to conflicting opinions in the over 100 pages of medical documentation submitted for review. Included in the medical evidence is a handwritten progress note by someone at (hospital) that “[w]e strongly suspect tear of pectoralis muscle from [illegible] shoulder. . . .” A record review was performed by Dr. T, who, in a report dated March 30, 1999, was of the opinion that the finding of the mass was “simply a fortuitous finding” and did not have “anything to do with the work compensable claim.” Dr. T concluded that, in his opinion, “the lipomatous mass in his right pectoralis is not work related.” Claimant dismisses Dr. T's opinion as “invalid” because it was a record review, rather than based on an examination. Claimant was examined by Dr. HS, who, in a report dated October 4, 1999, referred to another doctor's opinion “that the right pectoralis major fatty tumor was not related to the patient's working injury,” and concurred, stating that he, Dr. HS, “cannot correlate this [mass] with the patient's work injury” and that “the right chest complaints relating to the right pectoralis major fatty tumor does not appear related to the patient's work injury.” We would agree that there are other reports from Dr. RS and Dr. M which indicate that claimant has a right pectoralis muscle tear or rupture that requires surgery, rather than a tumor, and that the tear or rupture was caused by the compensable accident of _____. The hearing officer, in the Statement of the Evidence, writes that claimant “failed to establish by preponderance of the evidence, particularly medical evidence that

the suspected tear of his pectoralis major muscle was a result of the compensable injury he sustained on _____."

In any event, the medical evidence is in conflict and we have long noted that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. 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 (Tex. Civ. App.-Amarillo 1974, no writ). 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). We hold that the hearing officer's decision is sufficiently supported by the evidence.

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:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge