

## APPEAL NO. 001221

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 May 4, 2000. The hearing officer determined that appellant's (claimant) injury of \_\_\_\_\_, does not extend to an injury to the chest wall and left rib cage; that the claimant had disability from October 13, 1999, through December 6, 1999; and that the claimant did not have disability from December 7, 1999, through the date of the CCH. The claimant appeals, asserting that the hearing officer's determinations are against the great weight of the evidence. The respondent (carrier) urges in response that the challenged findings and conclusions are sufficiently supported by the evidence.

### DECISION

Affirmed as reformed.

The hearing officer's Finding of Fact No. 1D states that the parties stipulated that the claimant sustained a compensable injury to his right shoulder, right elbow, chest, and back on \_\_\_\_\_. In fact, the record reveals that the parties stipulated to a neck injury, not a chest injury. Finding of Fact No. 1D is reformed accordingly.

The claimant testified through a Spanish-language translator that approximately 20 years before the hearing, he underwent a thoracotomy to remove an abscess and that this procedure included the "removal" of two ribs and their replacement with wires. He went on to state that on \_\_\_\_\_, while running across a rooftop with a rope in hand to help coworkers raise a tall pole, he tripped on a wire and fell on an uneven portion of the roof, striking his stomach, chest, and head; that he was seen three days later by a chiropractor used by the employer who treated his right arm and back but not his chest although he complained of left chest pain; that he next was treated by another chiropractor, Dr. L, who treated his arm and neck but not his chest although he did complain about his chest pain; and that he next commenced treatment with Dr. A, apparently his current treating doctor, who took x-rays; told him some of the chest wires were broken; and referred him to another doctor.

The claimant further testified that he has been off work since the first doctor he saw took him off work on September 28, 1999, and that Dr. A still has him off work due to his neck, back, and chest. He said he sees Dr. A periodically for pills and does some physical therapy.

The claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which he signed on December 8, 1998, states his injured body parts as the right shoulder, elbow, neck, and back.

Dr. L's initial evaluation report of October 6, 1998, states that the claimant first saw another chiropractor in that office, Dr. M, on September 21, 1998. Dr. M's report does not

mention chest pain or contain a chest-related diagnosis. Dr. L's report stated the diagnoses as shoulder/rotator cuff sprain, elbow strain, neck strain/sprain, thoracic sprain/strain, and myalgia/myositis. Dr. L reported on December 2, 1998, that the claimant's diagnosis is neck sprain/strain, thoracic sprain/strain, myalgia/myositis, and shoulder sprain; that the claimant will undergo therapeutic exercises and myofascial release; and that the claimant will start a work conditioning program. Dr. L wrote on October 6, 1998, that the claimant is under his care and, to avoid aggravation of the claimant's condition, he recommends that the claimant be excused from work until October 20, 1998. Dr. L wrote an identical letter on December 1st recommending the claimant be excused from work until December 15, 1998.

Dr. A wrote on April 28, 1999, that the claimant had wires placed after a thoracotomy for treatment of an abscess in the left lung area and that he discussed the case with Dr. C, who felt that some of the wires have pulled free due to the fall, and that the claimant should be seen by a surgeon for further evaluation.

Dr. MA, apparently a cardiovascular specialist, reported to Dr. A on May 6, 1999, that he examined the claimant; that he and his associates have seen broken wires after sternotomies and patients never complain from that; that he "[does not] think this pain is caused by the wires"; that he feels the claimant could benefit from a nerve block; and that he "[does not] think these wires were broken because of the trauma."

The September 2, 1999, chest CT scan report of Dr. B states that "post-operative changes of the left posterior chest are noted with slight prominence of one of the sutures around the sixth rib, but the wire suture does not appear to penetrate the pleura and there is no disturbance of the adjacent lung." The report concludes that the chest CT scan is "otherwise normal." A signed September 3, 1999, "Preliminary Radiology Report" states the "Preliminary Results" as "old healed rib [fractures], multiple broken wires, absent portions of 6th and 8th ribs."

Dr. T, whose Report of Medical Evaluation (TWCC-69) reflects that he was a designated doctor, reported to the Texas Workers' Compensation Commission on December 6, 1999, that the claimant has not reached maximum medical improvement and that there is documentation that the wires were broken as a result of the injury on \_\_\_\_\_; that this could further result in the claimant's symptoms; and, therefore, that the claimant has not been adequately treated for his left-sided rib cage pain.

The claimant had the burden to prove that his injury of \_\_\_\_\_, extends to and includes an injury to the chest wall and left rib cage and that he had disability, as that term is defined in Section 401.011(16), from October 13, 1999, to the date of the hearing. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues

of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could conclude from the chest CT scan report and Dr. M's report that the claimant did not sustain the claimed chest wall and left rib cage injury on \_\_\_\_\_. The hearing officer could further conclude from all the evidence, as he did, that the claimant's inability to work after December 6, 1999, was not because of his compensable injury.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kathleen C. Decker  
Appeals Judge