

## APPEAL NO. 001234

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 April 26, 2000. The hearing officer concluded that the appellant's (claimant) compensable lumbar spine injury of \_\_\_\_\_, does not extend to or include the cervical spine and that the respondent (carrier) did not waive the right to contest the compensability of the claimant's cervical spine injury. The claimant requests our review of these determinations, asserting the insufficiency of the evidence to support them. The carrier urges, in response, that the evidence is indeed sufficient.

### DECISION

Affirmed as reformed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable lumbar spine injury while employed as a ticketer with the (employer). The claimant testified that on that date, she injured her neck and back moving boxes of sleeping bags; that after talking to her supervisor, she sought medical attention at the (clinic) where she complained of neck pain in addition to her low back pain; that she thereafter saw Dr. J with whom she treated for approximately one year; that during that time she was also treated by Dr. C, an orthopedic surgeon, who looked at her neck once or twice; and that these doctors would not treat her neck injury because the carrier would not pay for such treatment. The claimant indicated that, in addition to Dr. J and Dr. C, she also mentioned her neck pain to Dr. F, who examined her for the carrier, and to the designated doctor, Dr. S; and that if there was no diagnosis of a neck injury in the records of any of these doctors that was a matter over which she had no control.

The claimant acknowledged having signed an Employee's Request to Change Treating Doctors (TWCC-53) on March 31, 1999, requesting to change treating doctors to Dr. R for the reason that her current treating doctor had no further treatment for her. On this form the claimant stated the type of injury as "low back injury."

A clinic record of January 27, 1998, shows a pain drawing with only the low back marked. This same record also states that the claimant complained of a stiff neck. A clinic record of January 28, 1999, states that the claimant complains of pain in the neck, low back, and legs. None of the several pain drawings on the clinic records reflected neck pain and the diagnosis on the clinic records was lumbar strain. The records of Dr. J, also an orthopedic surgeon, reflect that his diagnosis was lumbar strain. Dr. C's records for the period May 19, 1998, through March 23, 1999, contain no mention of neck pain or a cervical diagnosis. The January 25, 1999, report of a functional capacity evaluation done for Dr. C contains no mention of cervical pain. An April 13, 1999, report of Dr. SH, a pain management specialist who apparently examined the claimant, does not include the neck among the several diagnoses. An MRI report of July 12, 1999, reflects protruding discs at

C3-4 and C4-5 with mild indentation upon the thecal sac and a protruding disc at C5-6 impinging upon the thecal sac.

The claimant contended that the clinic records established both that her low back injury extended to her cervical spine; that these same records provided the carrier with sufficient written notice of the claimant's cervical injury; and that the carrier failed to contest the compensability of the neck injury until it filed its June 30, 1999, Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). Queried about the evidence showing the date the carrier received the clinic records, the claimant responded, essentially, that the employer had these records and failed to provide them to the carrier.

The carrier contended that it did not have written notice that the claimant was contending she sustained a neck injury in addition to the low back injury until receipt of a report of Dr. R sometime in May 1999 and that it timely disputed the compensability of such injury with its June 30, 1999, TWCC-21.

The hearing officer found that the condition of the claimant's cervical spine was not caused by nor did it naturally result from the claimant's \_\_\_\_\_, injury, and that the evidence does not establish that the carrier actually received any written information fairly informing it of the claimant's name, the approximate date of injury, the identity of the employer, and information asserting that the claimant's alleged injury to her cervical spine is work related prior to receipt of Dr. J's report in May 1999. In her discussion of the evidence, the hearing officer makes clear that she was actually referring to a May 1999 report of Dr. R, not Dr. J, and we will, thus, reform Finding of Fact No.3 to so reflect.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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 to be 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 was not obliged to conclude from the claimant's early complaints of neck pain and stiffness that the claimant, in fact, sustained damage or harm to the physical structure of her neck on \_\_\_\_\_.

As for the waiver issue, a new rule, 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 the implementing provisions of Rule 124.3 "do not apply to disputes of extent of injury" and that if a carrier receives a medical bill that involves treatments or services believed not to be related to the compensable injury, the carrier shall file a notice of dispute of extent of injury not later than the earlier of the date the carrier denied the medical bill or the due date for the carrier to pay or deny the medical bill. See Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000, which applied the new rule to a

case in which the CCH was held prior to March 13, 2000. Accordingly, the hearing officer's conclusion of law that the carrier did not waive the right contest the compensability of the claimed cervical injury is legally correct.

We affirm, as reformed, the hearing officer's decision and order.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Judy L. Stephens  
Appeals Judge