

APPEAL NO. 001438

On May 22, 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.* (1989 Act). The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) right shoulder, right arm, and cervical degenerative conditions are a result of her compensable injury sustained on _____. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

On February 2, 1999, (employer) assigned the claimant to work as an administrative assistant at a client company's hospital. On _____, when the claimant returned to the hospital after lunch, she found that the hospital's employees had been evacuated from the hospital because gas from a ruptured gas line outside the hospital had gotten into the hospital. The claimant said that about two hours later a director of a hospital department told her that it was okay to go back into the hospital. The claimant said that she took the elevator to the hospital's basement where her office is located, that when she got off the elevator the air was thick with gas, that four men were running around the basement closing fire doors, that the men ran toward the elevator, that one of the men grabbed her by her right arm and jerked her back into the elevator, and that she drove herself to another hospital.

The parties stipulated that the claimant sustained a compensable injury on _____. The carrier said that it accepted an injury to the claimant's lungs from her inhalation of natural gas at the hospital on _____. The claimant said that she has been treated by chiropractors since she was a child and that prior to _____, she had been receiving chiropractic manipulations to her back, neck, shoulders, and arms from Dr. H, for about two years.

Medical records from the hospital the claimant drove herself to on _____ noted complaints of headaches, tingling in the arms, burning lungs, and shortness of breath. The claimant was seen by her family physician, Dr. G, on February 26, March 1, and March 25, 1999, and Dr. G noted complaints of coughing and shortness of breath. The claimant said that during March 1999 she continued to see Dr. H. The claimant said that her attorney referred her to Dr. A, whom she began to treat with on March 25, 1999. Dr. A noted in his reports that he was treating the claimant for work-related injuries and that the claimant complained of pain in her chest, right shoulder, right arm, neck, and back. The claimant has continued to treat with Dr. A.

Dr. L reported that an MRI of the claimant's right shoulder done on May 19, 1999, showed tendinitis, joint effusion, degenerative changes, impingement syndrome, and no

rotator cuff tear, and that an MRI of the claimant's cervical spine done the same day showed a bulged disc at C3-4, a protruded disc at C4-5, and stenosis and a protruded disc through a partially torn annulus at C5-6.

Dr. A wrote in December 1999 that when he initially saw the claimant, the claimant complained of difficulty breathing and pain in her right shoulder, right arm, and neck; that the claimant said that she had been exposed to gas and that she was injured while being rescued when a man grabbed her by the arm and jerked her back into the elevator; and that in his, Dr. A's, opinion, the claimant sustained injuries to her right arm, right shoulder, and neck, when she was grabbed by the arm and pulled back into the elevator. Dr. A gave testimony to the same effect at the CCH.

Dr. F examined the claimant at the request of the Texas Workers' Compensation Commission in February 2000 and Dr. F noted that the cervical MRI showed C5-6 degenerative disease and that the right shoulder MRI showed acromioclavicular joint degeneration. Dr. F stated an impression of cervical spondylosis, cervical sprain, and cervical radiculopathy and then stated that "these changes were aggravated by the jerking motion that she received on _____, obviously with the amount of arthrosis that is present some two months after the alleged injury, these were obviously present prior to her being jerked. This goes as well for her right shoulder." Later in his report, Dr. F wrote "she obviously had a degenerative joint disease and disk disease in her cervical spine as well as her right shoulder prior to the injury of _____. The jerking motion could aggravate these preexisting conditions."

The claimant had the burden to prove the extent of her compensable injury. The hearing officer found that "Claimant established through her credible testimony and the credible medical records of [Dr. A] and [Dr. F], that on _____, while furthering the business affairs of Employer, she injured her right shoulder/arm and cervical area when she was jerked on her right arm by a co-worker." The hearing officer concluded that "Claimant's right shoulder, right arm and cervical degenerative conditions are as a result of the compensable injury sustained on _____." The carrier asserts that the claimant and Dr. A are not credible and that Dr. F only reported that the claimant's preexisting conditions could have been aggravated. The carrier contends that the medical evidence does not prove that the claimant sustained a compensable injury to her right arm, right shoulder, and neck.

As the trier of fact, the hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). Dr. F reported both that the claimant's degenerative changes or conditions were aggravated and that they could have been aggravated. The hearing officer resolves inconsistencies in the evidence. The aggravation of a preexisting condition (in the course and scope of employment) is a compensable injury for purposes of the 1989 Act. Peterson v. Continental Casualty Company, 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet. h.). 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 or unjust.

The carrier objected to the introduction into evidence of Dr. A's letter of May 19, 2000, based on an untimely exchange of that letter. The hearing officer found good cause existed to introduce that letter into evidence. The carrier contends that the hearing officer committed reversible error in that evidentiary ruling. We conclude that the hearing officer did not abuse her discretion in admitting the May 19 letter into evidence. In addition, since Dr. A's testimony and letter of December 1999 were before the hearing officer without objection, the letter of May 19, 2000, was essentially cumulative of the other evidence before the hearing officer. Reversible error has not been shown.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge