

APPEAL NO. 001725

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 2000. The record closed on June 26, 2000. With respect to the issues before her, the hearing officer determined that the appellant (carrier) did not waive the right to contest the compensability of the claimed cervical injury and that the respondent's (claimant) compensable injury of _____, extends to his cervical spine. In its appeal, the carrier argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance. There was no appeal of the determination that the carrier did not waive the right to contest compensability of the cervical injury.

DECISION

Affirmed.

The hearing officer's decision contains a detailed factual summary which will not be repeated here. Briefly, the parties stipulated that the claimant sustained a compensable head laceration injury on _____. The claimant testified that on that date, he was working as an electrician's helper; that he was setting up temporary electrical service by installing a fuse box; that he went to get a tool; and that as he was walking quickly back to the work site with the tool, he ran into a raised forklift blade and fell to the ground. The claimant stated that in addition to sustaining a head laceration in the incident, he also injured his neck because his head was "driven back" by the force of the blow of his head on the forklift blade.

The emergency room records from _____, reflect that the claimant's head laceration was sutured. The claimant stated that he also complained of neck pain; however, the emergency room records do not reflect those complaints. On May 10, 1999, the claimant had his sutures removed and the records from that visit reflect complaints of neck pain. The claimant initially treated with Dr. B and Dr. C. The records from Dr. B and Dr. C reflect that the claimant's workup showed bilateral carpal tunnel syndrome, right ulnar neuropathy, and degenerative changes of the cervical spine. In October 1999, the claimant changed treating doctors to Dr. H, D.C., to whom he had been recommended by his attorney. On October 25, 1999, the claimant underwent a cervical MRI which was interpreted as revealing posterior herniations with central canal stenosis, cord compression, and foraminal narrowing at all levels and a left-sided herniation at C2-3. Dr. H has opined that the claimant's cervical injury is a result of the incident at work on _____. Similarly, Dr. R, D.C., the designated doctor, opined that the "mechanism of injury would indicate a cervical injury and the laceration injury."

On November 18, 1999, Dr. A examined the claimant at the request of the carrier. In his report, Dr. A stated that the claimant's October 25, 1999, MRI showed degenerative

changes and did not reveal any evidence of herniation. Dr. A opined that there was “[n]o objective evidence of a neck injury related to the incident of 05/03/1999.”

The claimant had the burden to prove that his compensable injury included his cervical spine. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of his claim. The carrier emphasized the same factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant's compensable injury included his cervical spine is supported by sufficient evidence and our review of the record does not demonstrate that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge