

APPEAL NO. 001769

On June 5, 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.* The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to the claimant's cervical area. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____, when the sleeve of her laboratory coat got caught in a machine and her right arm was twisted and lacerated. The claimant said that she pulled on her right arm when the sleeve was caught in the machine. The records of the claimant's treatment at a hospital emergency room are not in evidence but according to other medical reports a laceration of the claimant's right forearm was sutured at the hospital on November 3. Dr. O saw the claimant on November 5 and 9 and he diagnosed claimant with multiple contusions of the right arm, forearm, and shoulder. Dr. D began treating the claimant on November 11 and he stated an impression of abrasions, ecchymoses, and a laceration of the right upper extremity.

The claimant said that about two weeks after her injury, she noticed neck pain when in bed, but that it was not until December 10 or 15 that she had more neck pain when she tried to move her right arm after it was out of a sling. Dr. P, noted on November 30, 1999, that the claimant complained of neck pain. The claimant's right shoulder MRI of December 13, 1999, was reported to be normal. Dr. D noted on December 17, 1999, that the claimant complained of right-sided neck pain. Dr. D noted the claimant's neck pain in several subsequent reports. An EMG revealed mild right median neuropathy. The claimant underwent nerve blocks. Dr. F reported that an MRI of the claimant's cervical spine done on April 21, 2000, showed "generalized hypolordosis with localized mild mid cervical arcuate kyphosis."

Dr. L, who has also been treating the claimant, noted that Dr. P had noted the claimant's neck pain on November 30 and that Dr. D had noted the claimant's neck pain on December 17, 1999, and Dr. L requested that the claimant's cervical spine be considered part of the claimant's compensable injury. Dr. L wrote in May 2000 that the claimant's cervical MRI was normal and, using ICD-9 codes, diagnosed the claimant as having cervicgia and a neck sprain/strain.

Dr. M reviewed the claimant's medical records at the request of the carrier and, with regard to the claimant's neck complaints, wrote that, while the claimant may have had a

strain of the cervical musculature, there was no evidence that she had a significant spinal injury.

The claimant had the burden to prove the extent of her compensable injury. The hearing officer found that “[t]he compensable injury of _____, has no causal connection with the claimed problems in the cervical area” and he concluded that “the compensable injury does not extend to the claimed problems in Claimant’s cervical spine.”

The claimant contends that the hearing officer should not have considered the “testimony” of the carrier’s attorney. The carrier’s attorney did not testify at the CCH but only cross-examined the claimant and gave a closing statement.

The claimant contends that the evidence shows that her compensable injury includes a cervical strain. The hearing officer apparently was not persuaded that the claimant sustained physical harm or damage to her cervical area when she injured her right upper extremity on _____. The hearing officer could consider in weighing the evidence that it was not until about a month after the injury that neck pain was noted in the medical records. Although Dr. L diagnosed a neck strain and Dr. M stated that the claimant may have had a neck strain, the weight to be given to those reports was for the hearing officer to determine as the trier of fact. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. When reviewing a hearing officer’s decision to determine the factual sufficiency of the evidence, we should set aside the hearing officer’s decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers’ Compensation Commission Appeal No. 950084, decided February 28, 1995. 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 and unjust.

The hearing officer’s decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge