

APPEAL NO. 001805

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 June 27, 2000. The hearing officer determined that the appellant's (claimant) compensable injuries did not extend to an injury to the cervical and lumbar spine and that because the respondent (carrier) was not obligated to dispute extent of injury, there was no waiver. The claimant appealed the adverse determination that his injury did not extend to an injury to the cervical and lumbar spine on the grounds of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient to support the determination of the hearing officer and should be affirmed. The determination that the carrier had not waived the right to contest the extent of the injury by not timely contesting the claim was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that he worked as a film processor for the employer on _____, and that, as he opened a revolving door with his left arm and reached back with his right arm to pull a heavy cart film magazine through the door opening, the cart became stuck in the door track and jerked his arm. The claimant stated he felt pain radiating from his neck into his upper back and denied that he had any pain in his lower back. He testified that he reported his injury and tried to continue working but was unable to do so and went home. The claimant testified he sought medical attention at Hospital for pain in his neck, upper back and shoulder and the physicians released him back to light-duty work the next day. The claimant contended that he was told light-duty work was not available. When questioned further, the claimant stated he returned to work a week later and the employer had him filing and stuffing envelopes. The claimant contended he could not do this work because it hurt his neck and sought medical treatment at the (Chiropractic Clinic) where he was treated by a chiropractor who issued him a full work release. The claimant thereafter filed an additional claim for compensation contending that the filing and stuffing of envelopes further injured his neck.

The claimant admitted that on June 11, 1998, he was involved in a motor vehicle accident (MVA) and sought medical attention at (Clinic) for injuries he sustained in the accident. The claimant testified he was off work for a couple of weeks from the accident and returned to work, but he continued to be treated medically for the injuries through August 12, 1998. The claimant testified that his injuries (none specified) resolved and then he testified that his "problems" were aggravated by the accident at work in October 1998. During closing at the CCH, the claimant's attorney argued that the claimant's shoulder, neck and back were injured on _____, and there was no mention of a preexisting condition that was aggravated on _____. The claimant received a settlement in December 1998 for the MVA injuries.

On cross-examination the claimant was questioned regarding medical treatment he received on August 12, 1998, for the MVA injuries he sustained in June 1998; that medical records reflected he had continuing problems with his right shoulder, neck and low back; specifically, that the claimant was cautious when getting on and off the treatment table, avoided putting weight on his right arm, and that he had pain and reduced range of motion in all three areas. The claimant denied that he was having residual effects from the injury and asserted that wasn't having any problems, but was just "sore." The claimant was also questioned about whether he had had any prior workers' compensation claims which he denied. After being shown a print-out from the Commission reflecting five prior claims for injuries to multiple body parts including his back and hip, the claimant then acknowledged the claims but contended they weren't the same injuries.

The claimant's supervisor, Mr. Y, testified that the claimant reported only a shoulder injury to him on _____. Ms. D, the administrative manager for the employer, testified that when the claimant returned to light duty for his shoulder injury, she arranged to place him at a job stuffing photos into envelope packets. She testified that the claimant did not have any problems with the work. At some point, she stated she found a full work release in her mail basket. Upon review, Ms. D stated she spoke with the claimant who told her that the new job stuffing envelopes had injured his neck and back. Ms. D testified that she did not know that the claimant was asserting a neck and back injury from the _____, incident until after she received this full work release.

Medical records from the MVA dated June 16, 1998, indicate that the claimant was treated for injuries to his cervical spine, lumbar spine, thoracic spine, right shoulder, head and left knee. A torn right rotator cuff injury was suspected. An MRI of the right shoulder was ordered. The claimant continued to receive treatment for his MVA injuries through August 28, 1998, when he was discharged from treatment without an MRI on his right shoulder due to the claimant's being unable to go through the procedure. The attending physician wrote that the claimant at the time of discharge was improved in the cervical area, but he still had pain and that the claimant had severely limited range of motion in his right shoulder and a weak grip. The physician opined that surgery was needed to repair the torn rotator cuff. The claimant was discharged and referred to the VA hospital for further therapy.

Records from the hospital dated November 2, 1998, reflect that the claimant was treated for complaints of right shoulder pain only. There is no indication of neck or back complaints. The claimant was diagnosed with a right shoulder strain. Apparently no history was provided by claimant regarding the prior MVA shoulder injury.

The claimant began treating with Dr. S on November 12, 1998, for complaints of a rotator cuff tear, neck and lumbar back pain due to a claimed injury sustained on _____. The claimant did not provide a history to Dr. S of his prior MVA injuries, including the diagnosed rotator cuff tear. The claimant filed a Notice of Injury or Occupational Disease and Claim for Compensation dated November 13, 1998, in which he alleged an injury to his right shoulder, left arm, neck and lower back. The claimant was

referred to Dr. E who examined him on December 8, 1998, for complaints of right shoulder pain. The claimant did not relate a prior medical history of a possible torn rotator cuff injury to this physician. Dr. E diagnosed a torn rotator cuff and recommended surgery.

The claimant had arthroscopic surgery on his right shoulder on January 7, 1999, for a partial rotator cuff tear. Dr. D report of February 19, 1999, reflects that the claimant only asserted a neck and shoulder injury on _____. The claimant was examined on March 17, 1999, by Dr. M who, although he noted no abnormalities with the cervical spine on this date, found that the claimant had sustained a neck injury during the MVA on June 11, 1998. Dr. M's report did not contain any indication that the claimant was claiming a back injury. A letter from Dr. H dated May 3, 1999, reflects that the surgeon in January 1999, found only evidence of an "old healed tear" and he concluded that the claimant had a neck and right shoulder sprain on _____.

On appeal the claimant contends that he had a preexisting cervical and lumbar injury that was aggravated on _____. Although it does appear that this argument was not asserted by the claimant's attorney at the hearing, the hearing officer makes no findings of fact as to whether the claimant sustained an injury to any part of his body on _____; whether an injury, if any, was sustained in the course and scope of employment on _____; whether the claimant had a preexisting cervical and/or lumbar injury, if any, that could have been aggravated; or, whether the cervical and/or lumbar injury, if any, naturally resulted from a compensable injury of _____. Section 410.168(a) of the Act requires the hearing officer to issue a written decision that includes findings of fact. In the present case, the hearing officer made no findings of fact which supported her ultimate conclusion of law that the claimant's injuries do not extend to an injury to the cervical and lumbar spine. She merely used the same conclusion of law for her finding of fact.

The Appeals Panel may affirm a determination on any grounds supported by the record. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 000573, decided May 1, 2000. We have a duty to apply the applicable law to the issues raised, whether or not the hearing officer has made findings of fact when the findings can be inferred. We infer from the conclusion of law recited by the hearing officer and the record adduced at the CCH that the claimant did not sustain an injury to his cervical and lumbar spine in the course and scope of employment on _____.

We hold that the hearing officer's determination was not so against the great weight and preponderance of the evidence as to be manifestly unjust and there is no sound basis to disturb the determination. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR IN RESULT:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge