

APPEAL NO. 001849

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 July 6, 2000. The hearing officer determined that: (1) the _____, compensable upper extremity injury of appellant (claimant) does not extend to her neck and left shoulder; and (2) respondent (carrier) did not waive the right to contest the compensability of the neck and left shoulder. Claimant appealed both determinations on sufficiency grounds. Carrier responded that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that claimant's _____, compensable wrist injury did not extend to the neck and left shoulder. Claimant asserts that: (1) claimant worked more overtime and did more repetitive work than the general public; and (2) the required medical examination doctor's opinion was based on the incorrect assumption that claimant worked only eight hours per day. The applicable law regarding extent of injury and our appellate standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995.

It is undisputed that carrier accepted a left wrist injury in this case. Claimant testified that another claim for a right wrist injury was combined with the left wrist injury claim. Claimant contended that she also injured her neck and left shoulder through repetitive movements at her computer. Claimant testified that: (1) she worked as a customer service representative, taking calls and looking up information; (2) she worked typing at a computer and had "tension from the posture because the chair was not high enough to support [her] back"; (3) she injured her neck and left shoulder moving forward and back in front of the computer desk; (4) the claimed neck injury was due to the tension and the posture while she was reaching and working; and (5) she was experiencing problems with her shoulder and neck at the time that she first went to the emergency room on _____, regarding her left wrist. Regarding overtime work, claimant indicated she worked an average of 90 hours per week. However, a summary of hours worked indicated that out of 9 weeks from December 1998 to February 1999, claimant worked less than 45 hours per week during 5 of those weeks. The other 4 weeks, claimant worked weekly hours of 51.25, 56.50, 70.00, and 71.50. When asked about this, claimant indicated that she worked 90 hours per week at times before December 1998 and also after her _____, date of injury. We note that the summary indicated that, even after her injury, claimant worked only 40 and 50 hours per week.

The hearing officer determined that: (1) claimant's work-related activities were not traumatic to her neck or left shoulder; (2) the work-related activities were not repetitive to the neck and shoulder; (3) the work activities did not affect the neck or left shoulder in a way not common to the general public; and (4) claimant did not sustain a work-related

injury to her neck or left shoulder in the course and scope of her employment. The hearing officer noted that a preponderance of the medical evidence established that there is no causal link between claimant's employment and the left shoulder and neck complaints.

There was evidence in claimant's favor regarding causation. For instance, Dr. G did opine that claimant's work caused her neck and shoulder problems. However, other doctors, such as Dr. T and Dr. A, stated that claimant's spine degeneration and radicular symptoms cannot be related to her work activities. We further note that although claimant complained of pain from her neck down to her hand, Dr. T noted that claimant's pain was radiating pain and did not diagnose an injury to the left shoulder itself. Dr. T also noted good strength in the triceps, deltoid, biceps, and infraspinatus. Dr. A noted normal shoulder range of motion.

The hearing officer resolved any conflicts in the evidence and determined what facts were established. He decided what weight to give to the medical evidence in this case. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest the compensability of the neck and left shoulder. Claimant asserts that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) did not apply to the facts of this case. We addressed this issue in Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000; and Texas Workers' Compensation Commission Appeal No. 000800, decided May 22, 2000. We have reviewed the record, the hearing officer's determination, and claimant's contentions, and we perceive no reversible error.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge