

APPEAL NO. 001859

On July 26, 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 issues by deciding that the respondent (claimant) sustained a compensable injury to his neck in addition to his back on _____; that the correct impairment rating (IR) is 22%, as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission); and that the appellant (carrier) did not waive the right to dispute compensability of the claimant's claimed neck injury. The appellant (carrier) requests that the hearing officer's decision on extent of injury and IR be reversed and that a decision be rendered that the claimant did not sustain a compensable neck injury and that the claimant's IR is 11%. No response was received from the claimant. There is no appeal of the hearing officer's decision in favor of the carrier on the waiver issue.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____. The carrier accepted liability for a lower back injury. The issue regarding extent of injury is whether the claimant sustained a compensable injury to his neck in addition to his back on _____.

The claimant testified that on _____, he was performing his custodial duties for self-insured when he rolled up and lifted a heavy rubber mat from the basketball court to take to the locker room and felt lower back pain. He said that he then lifted the mat to his shoulder and felt neck pain. The claimant said that a few minutes after his injury, he told his immediate supervisor, PT, that he had back and neck pain. No statement or testimony from PT was in evidence. JD, the district custodial supervisor, and SN, the campus lead supervisor, stated in a written statement that the claimant reported to them that he had hurt his lower back moving the mat, that the claimant had been told to leave the mat alone because it was too heavy for one person to move, and that at no time during the claimant's discussions with JD was a neck injury mentioned. The claimant said that he did not talk to SN about his injury and that he did not tell JD about his neck injury.

The claimant said that he went to Dr. Z's office on April 7, 1997, and that he told the intern that examined him at Dr. Z's office that he had back and neck pain. The April 7 report from Dr. Z's office mentions the claimant's lumbosacral area but not his neck.

The claimant went to Dr. T on April 8, 1997, and Dr. T reported that the claimant complained of lower back and neck pain and he diagnosed the claimant as having, among other things, a lumbosacral strain and a cervicothoracic strain. Cervical spine x-rays of April 18, 1997, were reported as normal. Dr. T referred the claimant to Dr. B, who

diagnosed the claimant as having a cervical spine strain and a lumbar spine strain. A cervical MRI done on June 10, 1997, was reported to be normal.

Dr. S saw the claimant at the carrier's request and he reported on August 18, 1997, that the claimant was not at maximum medical improvement (MMI) and that he suspected that the claimant has lumbar spinal stenosis.

The claimant began treating with Dr. SE in November 1997 for his work-related injury of _____, and Dr. SE reported that the claimant has chronic lower back and neck pain. Dr. S referred the claimant to Dr. K, who reported in September 1999 that the claimant has myofascial pain syndrome in his cervical and lumbar spine.

The carrier appeals the hearing officer's finding that the claimant injured his neck in addition to his back on _____, and the hearing officer's conclusion that the claimant sustained a compensable injury to his neck in addition to his back on _____. The claimant had the burden to prove the extent of his compensable injury. Simply because the cervical MRI was normal does not mean that the claimant did not sustain a neck injury, where, as here, the claimant has been diagnosed with a cervical strain. The weight to be given to the claimant's testimony, the medical reports, and the written statements in evidence was for the hearing officer to determine as the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision that the claimant sustained a compensable injury to his neck in addition to his back 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.

With regard to the IR issue, Dr. SE certified on October 28, 1999, that the claimant reached MMI on March 17, 1999, with a 14% IR. The 14% IR includes impairment of the claimant's cervical and lumbar spine. The benefit review conference report reflects that the parties agreed that the claimant reached MMI on March 17, 1999.

The Commission chose Dr. C as the designated doctor and he certified on February 23, 2000, that the claimant has a 22% IR. The 22% IR includes impairment of the claimant's cervical and lumbar spine. A Commission dispute resolution officer wrote to Dr. C in April 2000 and advised Dr. C that the claimant's compensable injury does not include the cervical spine. In response to that letter, Dr. C certified on April 6, 2000, that the claimant has an 11% IR. The 11% IR includes impairment only for the claimant's lumbar spine.

Section 408.125(e) provides that, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary.

The carrier appeals the hearing officer's finding and conclusion that the correct IR is 22% as initially certified by Dr. C, the designated doctor. The carrier contends that the

correct IR is 11% as certified by Dr. C in his amended report because the claimant did not sustain a compensable neck injury. Because we are affirming the hearing officer's decision that the claimant sustained a compensable neck injury in addition to his back injury, we conclude that the carrier has not shown that the hearing officer erred in determining that the claimant's IR is 22%. The hearing officer's decision on the IR issue is supported by sufficient evidence and 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:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge