

APPEAL NO. 001866

Following a contested case hearing held on July 18, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the sole disputed issue by determining that the appellant's (claimant) right cubital tunnel condition is not due to or related to the compensable injury. The claimant challenges this determination, asserting that she injured her right elbow when she fell on _____; that she had elbow symptoms at that time; and that her evidence established that her elbow was injured in that fall. The respondent (carrier) contends in its response that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

Not challenged are findings that on _____, the claimant tripped while in the course and scope of her employment, fell backwards, and struck her head, low back, and right elbow on the floor; that x-rays of the right elbow taken at the emergency room on that date did not reveal the existence of any fracture or dislocation of the right elbow as a result of the fall; that the claimant has undergone significant medical treatment for the injuries sustained in the accident on that date; that on August 18, 1999, she underwent nerve conduction studies which revealed mild to moderate cubital tunnel syndrome in the right upper extremity and subclinical signs of a right carpal tunnel syndrome; that the nerve conduction studies revealed no signs of right cervical radiculopathy, brachial plexopathy, acute or chronic enervation, thoracic outlet syndrome, generalized peripheral neuropathy, myopathy, compression at Guyon's canal, or evidence of pronator teres syndrome; and that the claimant's treating doctor has opined that she sustained a double crush injury which resulted in a preexisting cubital tunnel syndrome becoming symptomatic.

The claimant testified that on _____, while working as a tomato paste operator for the (employer), her employer for 22 years, she was washing some machinery with a water hose, stumbled, and fell backwards, striking her head, neck, back, and right elbow. She said she was taken to a hospital where her injuries were treated and her right elbow x-rayed; that she eventually underwent cervical and lumbar spine surgery; and that after a disagreement with Dr. B about returning to work in March 1996, she changed doctors to Dr. T and later to Dr. G, her current treating doctor and apparently a neurologist. The claimant further testified that "from the very beginning," she has had symptoms "in [her] shoulder going down into [her] arm" and that her symptoms include pain, numbness in her hand and fingers, weakness, and an inability to hold onto objects without dropping them.

Dr. G's September 10, 1999, record states the impression as right cubital tunnel syndrome and post-fusion syndrome. On January 31, 2000, Dr. G wrote that the claimant is having difficulty getting authorization from the carrier for cubital tunnel release surgery; that the claimant told him that she did not have trouble with her right hand and arm before

the injury of November 10, 1996; and that it is his opinion that the claimant's cubital tunnel symptoms are related to her work-related injury. Dr. G wrote on February 2, 2000, again expressing his opinion that the claimant's cubital tunnel symptoms originated at the time of her work-related injury and that he thinks that the mechanism of the pain is from "double crush syndrome." Dr. G went on to explain this as follows: "When you developed the cervical radiculopathy as a result of your injury, your cubital tunnel symptom which is also related to work became symptomatic which is related to the repetitive activity that you did at work."

The April 5, 2000, report of Dr. S, an orthopedic surgeon who examined the claimant for the carrier, states that the claimant had no objective findings to support the diagnosis of compression of the ulnar nerve at the elbow and that this is so notwithstanding the EMG report. Dr. S further stated that given the lengthy time from the date of the claimant's accident at work to the date she was diagnosed with cubital tunnel syndrome, it appears to him that "it is certainly not related to the Workers' Compensation injury." Dr. S wrote on April 18, 2000, that with regard to the peer review performed by Dr. W, his opinion has not changed because Dr. W had essentially the same opinion, namely, that any cubital tunnel syndrome that the claimant may have "would not be related to the November 1995 incident."

The March 31, 2000, report of Dr. W, also an orthopedic surgeon, noted that while blunt trauma to the elbow can result in "Tardy Ulnar Palsy," this usually becomes symptomatic within several months of an injury and certainly within the first year; that there is no documentation or reference in the records of symptoms until some four years after the claimant's fall; and that, accordingly, this condition, in his opinion, "is not the result of the fall on _____."

In addition to the dispositive legal conclusion, the claimant challenges findings that her treating doctor's opinion on the relationship between the compensable injury and the subsequent cubital tunnel syndrome is neither logical nor credible; that the claimant has failed to prove a causal connection, within reasonable medical probability, between her compensable injury and the subsequent cubital tunnel injury; that the claimant has failed to prove that her cubital tunnel syndrome is a result of the fall on _____, which gave rise to her compensable injuries; and that she has failed to prove that her cubital tunnel syndrome is a naturally flowing result of the compensable injuries sustained on _____.

The claimant had the burden to prove that she sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ

ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). It was within the province of the hearing officer to weigh the medical evidence including the opinions of Dr. G, Dr. S, and Dr. W on the cause of the claimant's claimed right elbow injury and to decide what evidence was the more persuasive.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge