

APPEAL NO. 001906

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 18, 2000. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, did not extend to and include the current neck and bilateral shoulder condition. In her appeal, the claimant essentially argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable repetitive trauma injury, bilateral carpal tunnel syndrome (CTS), with a date of injury of _____. The claimant contends that she also injured her neck and both shoulders at that time. She stated that she was employed as a clerk for the self-insured in the juvenile detention department and that the injury to her neck and shoulders resulted from her repetitive lifting, pulling, and filing of juvenile case files. The claimant testified that she has had pain in her neck and shoulders since the outset and that the "stabbing, throbbing, and burning pain" increases with any activity involving the use of her arms and hands. Finally, the claimant stated that her doctors have advised her that the current problems with her neck and shoulders are a result of her 1991 compensable injury.

On January 31, 1995, the claimant had a cervical MRI which revealed mild posterior bulging at C3-4, C5-6, and C6-7 without significant spinal stenosis. An August 28, 1995, post-myelogram CT scan revealed a small central herniation at C6-7, while the myelogram revealed no nerve root compromise and "minimal anterior indentations."

In a progress note dated September 26, 1997, Dr. P, the claimant's initial treating doctor, stated that the claimant "has recurrent [CTS], recurrent flexor tenosynovitis which typically causing [sic] numbness in the hand and pain in the hand and forearm and referred up to her shoulder and neck. It is evident that the myofascial pain in her shoulder and neck are a direct result of [CTS]." Dr. P also opined that the claimant's CTS was causing referred pain in the claimant's neck and shoulder areas in treatment notes of September 21, 1994.

The claimant's current treating doctor is Dr. Z. Dr. Z has opined that the claimant has a small herniated disc at C6-7 and a left rotator cuff injury. Dr. Z also states that the claimant has cervical radiculopathy and that her pain is referred from her neck into her shoulders and hands. In an April 17, 1997, report, Dr. Z notes that the claimant "refers that during the time of the injury on _____ she injured her neck and hands, lifting files, and doing same repetitive bending of neck and hands."

The claimant has the burden to prove the nature and extent of her compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. - Texarkana 1961, no writ). The question of whether the claimant's compensable injury extends to her neck and both shoulders presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that her compensable injury extends to her neck and both shoulders. A review of the hearing officer's decision demonstrates that she simply was not persuaded that the claimant had sustained her burden of proving the causal connection between her neck and shoulder injuries and her employment. The hearing officer was not required to accept the causation opinions of Dr. P and Dr. Z and could consider the differences in the respective explanations of the claimant's problems in making her credibility determinations. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge