

APPEAL NO. 001909

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 August 2, 2000. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes her neck, left shoulder, left elbow, and radiculopathy. In its appeal, the appellant (carrier) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to her left wrist/hand on _____. The claimant testified that on that date, she was building truck seats for the employer; that she had to swing her left arm to dislodge the seat cushion from an inverter, which is a frame on which the seat is mounted; that she performed that motion 200 to 400 times per day, five to six days per week; and that as a result of this repetitive activity, she injured her neck, left shoulder, and left elbow in addition to her left hand/wrist.

On _____, the claimant completed an accident report form for the employer. On that document, the claimant stated that her injury was "pain L-hand & arm. Knot on L-arm" and listed "L-arm & hand" as the part of the body injured. On February 15, 2000, the claimant gave a recorded statement to an adjuster with the carrier. In that statement, the claimant stated that she injured her left hand/wrist. On cross-examination, the claimant explained that at the time she completed the accident report and gave her statement, her left hand and wrist hurt the most and were her primary concern and that is why she did not mention her left shoulder, left elbow and neck injuries at that time.

In a letter dated May 23, 2000, Dr. O opined that there was "no doubt in my mind that this mechanism of injury as described by the patient did cause injury and damage to the patient's shoulder and subsequently her cervical spine." In a May 2, 2000, progress note, Dr. O diagnosed cervical neuritis, left shoulder impingement syndrome, multiple cervical trigger points, and radiculopathy bilaterally to the upper extremities. In another progress note dated March 7, 2000, Dr. O had also diagnosed left medial elbow epicondylitis. A February 23, 2000, MRI revealed small anterior osteophytes at C5-6. On February 18, 2000, the claimant had x-rays of the cervical spine, left shoulder and left elbow. The cervical x-ray revealed C5-6 spondylosis and the left shoulder and left elbow x-rays were normal. On February 17, 2000, Dr. B performed nerve conduction testing on the claimant's left upper extremity. In his report, Dr. B opined that the claimant's testing revealed evidence of mild left carpal tunnel syndrome and right C-7 radiculopathy.

The claimant had 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). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence, decides what weight to give to the evidence, and determines what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's extent-of-injury determination is against the great weight of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of her claim. The carrier emphasized the same factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant's compensable injury of _____, extends to and includes the neck, left shoulder, left elbow, and radiculopathy is supported by sufficient evidence and our review of the record does not demonstrate 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; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain. The carrier argues in the alternative that the evidence does not establish that there is damage or harm to the physical structure of the claimant's neck, left shoulder and left elbow and, as a result, the claimant did not sustain her burden of proving injury within the meaning of Section 401.011(26). We find no merit in this assertion. The claimant's testimony, the diagnostic testing, and the medical evidence from Dr. O and Dr. B provide sufficient evidentiary support for the determination that there is damage or harm to the physical structure of the claimant's neck, left elbow and left shoulder. Nothing in our review of the record demonstrates that the determination that the claimant sustained an injury to her neck, left shoulder, and left elbow within the meaning of the 1989 Act is so contrary to the great weight and preponderance of the evidence as to compel its reversal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge