

APPEAL NO. 001954

On July 11, 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 claimant's (appellant) compensable injury does not extend to and include an injury to the abdomen, thoracic spine, cervical spine, and depression. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, she slipped on water in the bathroom at work and that her right leg went forward, her left leg went to the left, and she fell backwards. She was seen at a hospital on that date and was diagnosed with a left ankle sprain. The claimant said that about a week later, she felt back pain. The parties stipulated that on _____, the claimant sustained a compensable injury to her low back and left ankle. The issue agreed to at the CCH was whether the compensable injury of _____, extends to and includes "an injury to the abdomen, thoracic spine, cervical spine, and depression."

The claimant said that about a month after her _____, injury, she felt pain in her abdomen. Dr. L began treating the claimant on July 9, 1996, and he diagnosed the claimant as having a left ankle strain, an abdominal muscle wall strain, and a low back strain. Dr. L noted on September 4, 1996, that the claimant was mildly depressed. The claimant said that whenever she does pain drawings for her doctors she marks that she has pain from her neck down to her toes. She said that about two months after her _____, injury she began having neck pain.

Dr. R began treating the claimant in December 1996 and he noted that the claimant had reported abdominal and low back pain to Dr. L. An MRI of the claimant's lumbar spine done in December 1996 was reported to be normal. Dr. R referred the claimant to Dr. A for a neurological consultation and Dr. A noted that the claimant had been off work since September 1996 and that EMG and nerve conduction studies showed bilateral S1 radiculopathy. Dr. A noted in March 1997 that the claimant had muscle tightness in the thoracic and lumbosacral areas. Dr. A referred the claimant to Dr. S, who reported in April 1997 that the claimant complained of irregular vaginal bleeding since her fall. Dr. S diagnosed the claimant as having a herniated disc at L5-S1, lumbar radiculopathy, and a thoracolumbar musculoligamentous injury. Dr. R reported in June, August, and October 1997 that the claimant had spasms in her lumbar and thoracic regions. Dr. A noted in July 1997 that the claimant complained of low back, thigh, and abdominal pain.

An occupational therapist reported that a functional capacity evaluation (FCE) the claimant underwent in October 1997 was invalid because the claimant had five positive Waddell signs.

A lumbar myelogram done on May 6, 1998, was reported as unremarkable and a lumbar CT scan done the same day was reported to show a mild bulge at L4-5 and a mild bulge at L5-S1.

Dr. A noted on May 14, 1998, that the claimant complained of neck pain. Dr. A diagnosed the claimant as having disc herniations at L4-5 and L5-S1, and referred to the December 1996 MRI and a discography of September 1997.

Dr. T examined the claimant at the request of the carrier on June 11, 1998, and he assigned the claimant a zero percent impairment rating (IR). Dr. T noted that the claimant's pain diagram illustrated complaints in the cervical, thoracic, and lumbar spine, numbness in her legs, and aches in her shoulders and abdomen. Dr. T noted that there was a normal examination of the abdomen, that range of motion of the neck appeared to be normal, and that the claimant reported tenderness in her thoracic and lumbar spine.

On July 17, 1998, the claimant underwent back surgery. Dr. S performed a lumbar interbody fusion with instrumentation at L5-S1.

Dr. A reported in December 1998 that the claimant was depressed from her chronic pain problem. Dr. A reported in April 1999 that the claimant has a 28% IR for a specific disorder of the lumbar spine, neurological dysfunction, and chronic pain depression.

Dr. J, the designated doctor, reported in July 1999 that the claimant has a 25% IR for a specific disorder of the lumbar spine and neurological dysfunction.

Dr. A saw the claimant several times from August 1999 through May 2000 and he diagnosed the claimant as having residual radiculopathy and "chronic pain syndrome secondary to low back pain and radiculopathy with depression and sleep disturbance."

An occupational therapist reported that the claimant had five positive Waddell signs during an FCE on June 1, 2000, and that the claimant would benefit from psychological intervention and pain management.

Dr. N performed a psychiatric evaluation on the claimant on June 8, 2000, and assessed the claimant as being very depressed.

Dr. T reported that the claimant demonstrated chronic pain behavior and symptom magnification during an FCE done on June 15, 2000.

FP, a licensed clinical psychologist, reviewed the claimant's medical records and a videotape of the claimant at the request of the carrier and reported that in his opinion there

is no evidence to substantiate the presence of a psychological disorder or a mental depression that can be attributed to the injury of _____.

Dr. A wrote that Dr. T ignored the data in the records and that FP's report should be totally discounted.

A videotape of the claimant taken on February 3 and 4, 2000, showed the claimant walking, bending, sweeping, hanging laundry on a clothesline, watering plants, shaking out a blanket, lifting and carrying a large rug, and beating the rug with a broom.

EP, claimant's neighbor, testified that the claimant is in a lot of pain, that the claimant complains of abdominal and neck pain, and that there is a great difference between what the claimant can do presently and what she was able to do previously.

The claimant had the burden to prove the extent of her compensable injury. The claimant appeals the hearing officer's finding that "on _____, the claimant did not sustain an injury to the abdomen, thoracic spine, cervical spine or in the form of depression, while in the course and scope of her employment" and the hearing officer's conclusion that the compensable injury of _____, does not extend to and include an injury to the abdomen, thoracic spine, cervical spine, and depression.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It is clear from the hearing officer's Statement of the Evidence that she believed that the claimant had been magnifying her symptoms and that the claimant's complaints to her doctors were inconsistent with the activities shown on the videotape. As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. We conclude that the hearing officer's decision 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. We conclude that the hearing officer did not abuse her discretion in denying the claimant's request to leave the record open to obtain an another report from Dr. N.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge