

APPEAL NO. 002094

Following a contested case hearing held on August 17, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the respondent (claimant) sustained a compensable injury to her neck in addition to her bilateral wrists, but not to her thoracic spine. The appellant (carrier) has appealed the determination that the claimant's neck is part of the compensable injury asserting, in essence, that the hearing officer erred in crediting the opinion of Dr. CO because the claimant failed to inform him of her history of prior neck injuries. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer's determination that the claimant did not injure her thoracic spine on _____ (all dates are in 2000 unless otherwise stated) has not been appealed and has become final. The parties stipulated that on _____ the claimant sustained a compensable injury to her bilateral wrists.

The claimant testified that prior to _____ she worked on a machine which put stuffing in the backs of the vehicle seats being manufactured at the employer's plant; that on _____, at about 6:00 a.m., she was assigned to work the machine which was used to stretch the fabric over the seat cushions; and that to do this job she had to grip the fabric with both hands and pull it back and downwards to stretch it over the seat cushion frame. She indicated that this pulling and stretching was done at about her waist level and said that because she is a small person the work was awkward for her and that at about 1:00 p.m. she felt a strain, told her supervisor, Mr. W, about it, and continued to work. The claimant further stated that later that day she saw a doctor because she had a headache and pain in her wrists, arms, neck, and upper back. She said she first saw Dr. R and was referred to Dr. CO. Dr. R's diagnoses included cervical neuritis with radiculopathy bilaterally to the upper extremities and multiple cervical and thoracic trigger points.

Mr. W testified that on _____ at around 9:00 a.m. the claimant reported having problems with her wrists and that around 1:00 p.m. that day she wanted to go see a doctor. He said he could not recall the claimant's complaining of neck symptoms. Mr. W also indicated that the 40% cushion closeout machine the claimant was working on had been experiencing problems with fabric tearing during the pulling and said that "[i]t was pretty difficult around the last part, so it might would affect her hand some."

Dr. CO testified that he had toured the plant, had seen the type of work the claimant was doing on _____, and had personal experience doing similar work for his father's furniture manufacturing business. He stated that in his medical opinion, the claimant's diagnosed cervical problems were related to her duties and the incident of _____. He noted that the claimant is of small stature and explained that with the pulling and

stretching she was doing, her upper extremity muscles would give way from weakness and injury and pressure would be transferred to her cervical spine causing an inflammatory process and injury. Dr. CO stated that he had not been able to provide much treatment to the claimant's cervical spine because the neck injury was contested. He acknowledged that an MRI showed no disc protrusions or herniations or disc degenerative changes but said he felt an EMG should be performed to look for nerve entrapment. Dr. CO further stated that the claimant did give a history of prior wrist injuries in 1996 and 1997 and neck and low back injuries in 1994 and 1995 but that she had no residual damage from those injuries and was asymptomatic before March 6. He also said he had read and disagreed with the June 1 report of an independent medical evaluation by Dr. B.

Dr. B's report concluded that there is no electrodiagnostic evidence to suggest that the claimant's upper extremity symptoms are attributable to cervical spine radiculopathy; that there is no history of any work-related injury which would produce such symptoms; and that he saw no reason to relate her claims regarding her neck to the work she was doing on _____. Dr. B further stated that the claimant has "an extensive record of previous claims regarding the upper extremities" which "sound very similar to her current complaints" and that "[t]here are certainly pre-existing conditions which may have been aggravated by her current work." In evidence is a communication from the Texas Workers' Compensation Commission reflecting that the claimant's claim for her _____ injuries is her 12th workers' compensation claim since June 1989. The claimant acknowledged having had prior injuries to her wrists and neck.

The July 17 report of Dr. M, the designated doctor who assigned the claimant an impairment rating of 14% for her wrists and cervical spine, states his impression that the claimant's current problems are a result of aggravation of previous injuries.

The claimant had the burden to prove by a preponderance of the evidence that her injury of _____ extended to and included her neck. 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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 a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge