

APPEAL NO. 002110

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 15, 2000. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include cervical and lumbar spine injuries. 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 (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her right shoulder and right ankle on _____. The claimant testified that on that date, she stepped on a manhole cover, that the cover gave way, and that she fell, landing on her right side. The claimant stated that when she fell, the first thing she noticed was that she felt a "pop" in her neck and then the pain went down her entire spine and into her tailbone. The claimant acknowledged that she had neck problems prior to the April 30th incident and that she had a prior compensable injury to her cervical spine which resulted in her having cervical fusion surgery at C5-6 and C6-7. The claimant also acknowledged that she had seen Dr. B about her neck prior to the _____, fall at work; that Dr. B had ordered a cervical MRI on April 2, 1999; that the cervical MRI revealed a large disc herniation with osteophyte formation at C6-7 and a large osteophyte at C5-6; and that Dr. B had told her prior to _____, that she would need cervical surgery. However, the claimant maintained that her cervical symptoms, namely her pain, numbness, tingling, and the electrical shocks that went down her arms, became much worse after the _____, fall at work.

The claimant sought medical treatment on _____, with Dr. T. Dr. T's records reflect complaints of neck, right ankle, and shoulder pain but do not mention low back pain. Thereafter, the claimant began treating with Dr. B. In his initial report, Dr. B reflects complaints of low back pain in addition to cervical, right shoulder, and right ankle pain. In a "To Whom it May Concern" letter dated June 12, 2000, Dr. B opined that the claimant's low back injury was related to her _____, compensable injury. Dr. B referred the claimant to Dr. S for a surgical consult for her cervical injury. On November 4, 1999, Dr. S performed a redo cervical fusion at C5-6 and C6-7.

The carrier had Dr. DH examine the claimant. In a report dated September 7, 1999, Dr. DH opined that the claimant's _____, compensable injury included her lumbar spine but that "it is clear that her cervical structural abnormalities predated the injury of 4/30/99 and are not related to that injury." Dr. MH also examined the claimant, apparently at the request of the carrier. Dr. MH opined that the claimant's _____, fall at work aggravated the preexisting condition in her cervical spine and that it was part of her compensable injury. Dr. MH's report does not reference the lumbar spine or lumbar complaints.

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). An extent-of-injury issue presents 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 and decides 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 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).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that her _____, compensable injury extends to and includes cervical and lumbar injuries. In making his determination, the hearing officer emphasized that many of the claimant's medical records did not contain references to lumbar complaints; that a cervical MRI of April 2, 1999, revealed a large herniation at C6-7 and osteophyte formation at C5-6; and that Dr. B had advised the claimant that she would need cervical surgery prior to the _____, injury. Each of those factors was properly considered by the hearing officer in making his credibility determinations. Our review of the record does not demonstrate that the hearing officer's determination that the claimant's compensable injury does not extend to or include cervical and lumbar injuries 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 that determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge