

APPEAL NO. 002214

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 September 6, 2000. The hearing officer determined that the November 29, 1999, compensable injury of the respondent (claimant) included a cervical injury. Appellant (carrier) appealed this determination on sufficiency grounds. The file did not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's compensable injury extended to a cervical injury. Carrier asserts that: (1) no sensory or motor studies were performed on claimant's neck; (2) claimant initially told Dr. D that she had no real neck pain; (3) neck pain was not documented until March 2000; (4) the neck pain did not manifest itself at the time of the carpal tunnel syndrome (CTS) injury; (5) there is no evidence or medical documentation of a neck injury or radiculopathy; (6) claimant might have injured herself at home because she lives on a farm, a fact that she did not reveal to Dr. D; and (7) claimant's supervisor indicated that claimant did not spend much time flexing and extending her neck at work.

Claimant testified that her compensable occupational disease injury was related to her work as an administrative clerk. She said she began experiencing tightness in her neck and shoulder, pain shooting down her arms, and pain in her hands in 1999. She testified that in September 1999, she had pain shooting down her arm and she thought she was having a heart attack. Claimant said some of her work involved turning to look at computer monitors and reaching to use different keyboards. She said her doctor told her that her injury was caused by "continuous looking up and down in different places." Claimant said she thought her neck symptoms were from tension. She said that initially she was treated for CTS, but after her CTS release surgeries, the numbness in her hands did not go away. She said Dr. D performed MRI testing, which revealed a cervical herniation.

In a January 7, 2000, report, Dr. D noted that claimant did not have "true neck pain or pain that radiates into the upper extremities." In a March 2000 report, Dr. D stated that claimant had neck pain that radiates into her forearm, that she had had this pain for a while, and that she did not relate the problems with her hands to her neck. Claimant was diagnosed with cervical radiculopathy and an MRI report stated that claimant had a disc herniation "causing prominent encroachment upon the anterior aspect central portion of the dural sac with displacement of the spinal cord. . . ." In a June 2000 report, Dr. D stated that claimant's CTS and neck injury "are work related due to data entry and flexion extension repetitive motion of the cervical spine."

It was claimant's burden to establish that the compensable injury included a cervical injury. The substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. The use of "magic words" by an expert does not in itself establish causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995. The trier of fact judges the weight to be given expert medical testimony and resolves any conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We have reviewed the record and evidence regarding the scope of the compensable injury. To the extent that the evidence was conflicting, that was a matter for the hearing officer as fact finder to determine. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer considered the evidence and carrier's assertions regarding whether claimant sustained a cervical injury and regarding causation. The hearing officer could find from the evidence that claimant's injury included her neck. Texas Workers' Compensation Commission Appeal No. 981138, decided July 10, 1998. There was testimony from claimant and medical evidence from Dr. D, which support the hearing officer's determinations in this case. The factors raised by carrier were for the hearing officer to consider in making her determinations. The hearing officer resolved the inconsistencies in the evidence and determined what facts were established. We note that Dr. D indicated in an August 2000 letter that hand and arm symptoms may be symptoms of a cervical injury. Regarding whether claimant complained of neck pain, this was a factor for the hearing officer to consider in making her determinations in this case. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Tommy W. Lueders
Appeals Judge