

APPEAL NO. 002273

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 29, 2000. The issues at the CCH were whether the appellant's (claimant) compensable injury of _____, extended to an injury to the neck and left shoulder, and whether the claimant had disability from the _____, injury for the period from January 17, 1999, through November 17, 1999.

The hearing officer held that the claimant had not proven the extent of her injury to the disputed body parts, and that she did not show that her _____, injury (to the accepted extent) had caused the inability to work for the period claimed as the period of disability.

The claimant appeals and sets forth various medical records that she contends were not considered by the hearing officer. The claimant asks that the decision be reversed as against the great weight and preponderance of the evidence. The respondent (carrier) responds that the decision is supported by the record and not reversible.

DECISION

We affirm.

The testimony in the case was brief and the matter was to be determined primarily on medical records. However, the claimant testified that while employed by (employer) she injured herself on _____, pulling up a heavy wastebasket onto an escalator with her right arm. She said that she pulled her arm and felt a lot of pain in her back. The history given in later medical reports was that the garbage can began to tip and she caught it with her left hand. The claimant continued to work for five days until a second accident on _____. She said she bent down to pick up a small garbage can and was unable to straighten up. The claimant contended that she had neck and shoulder pain since _____. The claimant testified both that she missed work because of both injuries, and that she missed work beginning June 9 because of what happened then.

The claimant's primary treating doctor was Dr. H. Dr. H wrote in a March 7, 2000, report that her office began treating the claimant on July 17, 1998, for an unrelated condition and that the claimant mentioned that she injured her left shoulder and neck on _____. Dr. H was of the opinion that the June 4 injury was the sole cause of her neck and left shoulder injuries; this letter does not indicate an awareness of a _____, injury. Dr. H's report stated that her office was not able to analyze the claimant's neck and shoulders until November 1998 because treatment was initially denied for these areas. However, Dr. H's records indicated that prior to November 1998, her office was treating the claimant for the June 9, 1998, injury. Dr. H's reports that were issued for the period of time for which disability is claimed pronounce the claimant "unfit for work."

A Dr. B, apparently asked to independently review the claimant's medical records relating to both injuries, opined that it was the _____, injury that was the cause of the claimant's left shoulder and cervical problems.

A cervical myelogram performed on May 11, 1999, was reported as showing chronic cervical spondylosis at C5-6 and C6-7, with degenerative changes, an osseous foramina narrowing at C6-7, and a small herniation at C4-5. The claimant was in her mid 40s at the time of the injury.

A peer review chiropractor for the carrier wrote on March 15, 1999, that the claimant's neck and left shoulder problems did not relate to what he deemed an "inconsequential" event on _____. He said that the cervical spondylosis was a long-standing condition not reasonably related to the mechanism of the injury occurring on _____. This doctor also stated that the effects of a right shoulder injury should have resolved well before his report.

The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on July 22, 1998, which contended that she hurt her neck and shoulders (left and right) while pulling the heavy container up an escalator with her right arm, and then having to grab it with both arms. The employer's internal report of injury was signed by the claimant and stated that the claimant hurt her right arm and shoulder; however, it should be observed that the claimant's testimony at the CCH was translated, and she said that she did not read or understand English.

An independent medical examination conducted on December 18, 1999, found that the claimant continued to have numbness in her right fingers but that there was no tenderness in the shoulders or elbows.

We note that during the CCH, the hearing officer commented that the claimant was gesturing to an area of her body (the right shoulder area) as the injured and painful area from her _____, injury and he commented as to his concern that this was different than her testimony would indicate.

The decision does not set forth in detail why the hearing officer considered the claimant's contention to be unpersuasive and there is clearly medical evidence that, if believed, would have supported a decision in the claimant's favor. However, it is the hearing officer that is the sole judge of the weight and credibility of the evidence and who has the opportunity to personally observe the witness during testimony. The fact that different inferences could be drawn does not provide a sufficient basis for reversal where there is sufficient evidence in support of the decision. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). There was evidence to support a conclusion and inference that the neck and left shoulder problems are degenerative and were not caused or aggravated by the _____, garbage can incident. The hearing officer could also conclude that the effects

of the right shoulder injury (vis-a-vis the disability issue) were more limited in scope and did not cause a much-later inability to work.

The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge