APPEAL NO. 002283

Following a contested case hearing held on August 30, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant/cross-respondent's (claimant) compensable injury did not extend to the right leg, that the claimant is not entitled to lifetime income benefits (LIBs), and that the respondent/cross-appellant (carrier) is not relieved from liability because of the claimant's alleged failure to notify her employer of the follow-on injury within 30 days of the date of the injury. The claimant appealed, asserting that the hearing officer's determinations that the compensable injury does not extend to the right leg and that she is not entitled to LIBs are against the great weight of the evidence and should be reversed. The carrier appealed the hearing officer's determination that the claimant was not obligated to give notice of the follow-on injury to her former employer within 30 days and the carrier is not relieved from liability, urging that such determination is contrary to law and that the hearing officer's determination should be reversed and a new order rendered that it is not liable for the payment of benefits even if the right leg is part of the compensable injury. The carrier responded to the claimant's appeal. The claimant did not respond to the carrier's appeal.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant sustained a compensable injury to her left wrist in 1992 and developed reflex sympathetic dystrophy (RSD) in her left arm. It is undisputed that the RSD in the left arm is a component of the compensable injury.

Several years later, the claimant began to develop what she asserts to be RSD in her right leg. The existence of RSD in the right leg, and the factors which caused the purported RSD, are at issue in this matter. The hearing officer determined that the claimant had not established that the RSD of the right leg, if it in fact exists, was naturally resulted from the compensable injury to the left wrist and the subsequent development of RSD in the left arm. The claimant testified that she had begun to experience what she believed were symptoms of RSD in her right leg prior to several surgeries to her right foot in 1996 and 1997. She also testified that Dr. G, a specialist to whom she was referred by her treating doctor, had told her that she definitely had RSD in her right leg.

The medical evidence on causation of the RSD of the right leg is conflicting. The claimant's treating doctor, Dr. S, is of the opinion that the claimant has RSD in her right leg and that it results from her compensable injury. Dr. S testified that he believes that the right leg RSD is related to the claimant's compensable injury and agreed with a statement by the claimant's attorney that if the claimant had not sustained an injury to her left upper extremity in May of 1992 she would not have developed RSD in her right leg. Dr. S's reasoning was that the claimant's left arm injury caused the claimant to be sedentary; that the claimant's inactivity caused her to develop problems in her right leg; that the problems in the right leg caused chronic swelling and chronic pain; and that the chronic swelling and chronic pain triggered RSD in the right leg which would not have been otherwise triggered

but for the development of RSD in the left arm. Carrier's expert witnesses, Dr. K and Dr. H, testified that while the claimant may be prone to the development of RSD, multiple surgeries to the claimant's right foot triggered the RSD (if it in fact exists) and the existence of RSD in the left arm is of no significance to the development of RSD in the right leg other than to indicate that the claimant is prone to the development of RSD in the event of trauma to the affected limb.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. Causation of RSD is beyond the realm of common experience and must be proven by expert medical evidence. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer is the sole judge of the weight and credibility of the evidence. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. We affirm the hearing officer's determination that the claimant's compensable injury does not extend to her right leg. Because we affirm the hearing officer's determination that the right leg is not a part of the compensable injury, we also affirm the hearing officer's determination that the claimant is not entitled to LIBs because of the loss of a hand at or above the wrist and the loss of a foot at or above the ankle.

The carrier contends that the hearing officer erred in finding that the carrier was not relieved from liability because the claimant failed to give notice of the alleged follow-on

injury to her employer within 30 days from the date of the injury. We do not agree that the citation to Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994, or the dicta in that case, is controlling. In Appeal No. 94231, the Appeals Panel remarked that "[a]rguably, additional notice is required when an injury is not one readily apparent as disease or harm 'naturally resulting' from an injury to the ankle or knee, as set out in the definition of injury in Section 401.011(26)." However, in Texas Workers' Compensation Commission Appeal No. 971706, decided October 16, 1997 (Unpublished), a case where the employee injured both knees, but initially gave notice to the employer of only the left knee injury, the Appeals Panel wrote:

> Carrier apparently contends that claimant was required to report that her injury *extended* to her right knee. In DeAnda v. Home Insurance Co., 618 S.W.2d 529, 533 (Tex. 1980), the Supreme Court of Texas stated that to fulfill the purpose of the statutory provision relating to notice of injury, "the employer need only know the general nature of the injury and the fact that it is job related." With respect to actual knowledge of the injury, the court stated that it "need not apprise the employer of the exact time, place and extent of the injury." DeAnda; Appeal No. 941103, *supra* [Texas Workers' Compensation Commission Appeal No. 941103, decided October 3, 1994]. Therefore, claimant need not have specifically reported that she also injured her right knee.

In light of the foregoing, we hold that the claimant had no duty to advise her employer of complications (the alleged follow-on injury) arising out of the original injury and that she timely reported her injury. We therefore affirm the hearing officer's decision that the carrier is not otherwise relieved of liability from compensation because of the alleged failure to give notice of the follow-on injury to the employer.

Finding no reversible error and sufficient evidence in the record, we affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge