

APPEAL NO. 002356

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 September 18, 2000. The hearing officer determined that the appellant's (claimant) compensable injury did not extend to and include a cervical (neck) injury. The claimant appealed the adverse determination on the grounds of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient and urged affirmance.

DECISION

Affirmed as reformed.

The parties stipulated at the CCH that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome (CTS) on _____. The hearing officer's decision and order reflects a stipulation that the injury occurred on _____. We reform stipulation number 1C to properly reflect the stipulation made by the parties at the CCH.

The claimant testified that he traveled across the United States as a jeweler, carrying a portable workstation comprised of three trunks weighing approximately 90 pounds each. The claimant asserted that on "the date of the injury," while pulling out one of the trunks from the trunk of his car, he felt pain and numbness in his hands which began to swell with pain in his upper arms. He did not immediately feel pain in his neck but began to feel pain as he continued to travel and remove and replace the trunks in and out of his car. The claimant testified that he sought medical treatment in November 1996 for numbness and swelling in his hands but did not have a chance to do so until this time because of his travel schedule. The claimant admitted that he was not diagnosed with a cervical problem until April 1997. He contended at the CCH that his neck injury was sustained on _____, when he removed the heavy trunk from his car. The claimant also admitted that he had previously injured his lower back in the early 1990's.

Medical records from Dr. G reflect that the claimant presented to Dr. G on November 4, 1996, for complaints of chronic lower back pain, returning after an absence since April 1995. The progress note does not document any complaint of neck or hand pain associated with a specific event at work on _____. The claimant was advised to return in four months. On November 7, 1996, the claimant returned to Dr. G for a "follow-up" evaluation of bilateral hand paresthesia and pain with a sense of weakness. Dr. G had scheduled the appointment for the claimant to undergo a screening for CTS. Nerve conduction studies performed on this date do not indicate the presence of a neuropathy. There are no complaints of neck pain documented in the report or any indication that the claimant injured himself at work on _____.

The claimant returned to Dr. G on April 7, 1997, for continuing complaints of bilateral hand weakness and numbness in the median nerve distribution, which Dr. G documents

as beginning in late October 1996. Dr. G documents that the claimant complained of cervical pain in association with the numbness. Dr. G wrote, "his job which does require him to do fine manipulation with his hands, greatly exacerbates his symptoms." Dr. G diagnosed a cervical strain but did not rule out any neurological involvement in the cervical spine. An MRI of the cervical spine and EMG studies were recommended to rule out any nerve root pathology.

An MRI dated April 22, 1997, reflects mild cervical spondylosis at C4-5; a small right paracentral herniation without cord compression at C5-6; and a large right paracentral herniation with no cord compression at C6-7. On April 30, 1997, nerve conduction studies were again performed by Dr. G to determine whether the claimant had active radiculopathy. Dr. G determined that there was no evidence to suggest a current presence of an active cervical radiculopathy or peripheral neuropathy and found the claimant to be neurologically stable. On June 7, 1997, Dr. G wrote that as a result of his neck injury the claimant had symptoms to his hands which were appropriately manifested by paresthesia and intermittent weakness. Dr. G continued with:

[h]e does remind me that his work not only requires excessive hand utilization but also static head and neck positioning with usually a flexed position being maintained. In addition, he carries and transports two 70 pound cases as well as one case which weighs approximately 96 pounds and he specifically recalls injuring himself while pulling these cases in and out of his automobile trunk. This certainly would explain his cervical neck injury but the repetitive nature of his work has also predisposed him to such an injury.

A report dated October 3, 1997, from Dr. G reflects that the claimant presented on November 4, 1996, with a two-month history of sudden onset of bilateral hand weakness and numbness which the claimant remembered began on _____. The claimant apparently related to Dr. G that, after long hours of work performing fine manipulation, he had a sudden onset of cervical pain which he associated with bilateral hand weakness and numbness. On June 23, 2000, Dr. G wrote a letter to the Texas Workers' Compensation Commission reciting that his records reflected that the claimant was initially seen for bilateral hand numbness, which he ultimately determined to have been due to a cervical condition directly resulting from a work injury on _____.

The hearing officer wrote that Dr. G failed to explain how a cervical injury, which did not produce radiculopathy, could have caused the claimant's hand condition. She determined that the claimant did not sustain an injury to the cervical region of his spine in the course and scope of employment on _____.

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. 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, 224 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, as reformed, the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge