APPEAL NO. 002402

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 7, 2000. The hearing officer determined that the _____, compensable injury of the appellant (claimant) did not include "current neck problems consisting of herniated discs and pain." Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Claimant contends that the hearing officer erred in determining that his compensable injury did not include a cervical injury. He asserts that his testimony established the extent of his injury and that the medical records did not mention treatment of a neck injury because his doctors were concentrating on treating his lumbar compression fracture. Claimant asserts that the reason why there was no documentation of treatment of a neck injury is because Dr. FR did not give him proper treatment. Claimant asserts that he changed treating doctors and was able to see Dr. N in early November 1999 and Dr. N treated his neck. The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001804, decided September 6, 2000.

Claimant testified that on _____, he fell through the ceiling of an attic, that he did not know if he landed on his feet, that he lost consciousness, and that he was taken to the emergency room (ER) in an ambulance. Claimant said he speaks some English, but that he talked to some medical personnel through an Arabic language interpreter. ER records indicate that claimant complained of back and neck pain, that he denied loss of consciousness, that he said he fell and landed standing up and that he had a hematoma on his head and an abrasion on his left elbow. Medical personnel thereafter stated that claimant reported that he did lose consciousness and how claimant landed when he fell and whether he lost consciousness was disputed at the hearing.

Dr. FR treated claimant's compression fracture with a molded body jacket. In a September 29, 1999, report, Dr. FR stated that most of claimant's acute pain was gone and that "he had no neurological findings currently."

In this case, the hearing officer determined that the injury did not extend to the neck and stated that:

> There is no dispute that claimant did have a laceration [on] his head, but there is little mention of this throughout the medical reports. . . . It cannot be overlooked that claimant was examined by several doctors who all completed rather thorough reports and *none mention cervical complaints* or pain. This

> is questioned by [Dr. G] and [Dr. FUL] as well. *Even [Dr. N] admitted no complaints in his first few examinations* with claimant. The problems in the cervical [area] are rather severe and yet there were *no complaints for over five months*. This delay of onset is troubling. . . . [Emphasis added.]

We recognize that the issue of extent of injury is a fact question for the hearing officer. However, we have considered the hearing officer's statements supporting her determinations and we must remand for reconsideration. The hearing officer stated that there were no complaints of cervical symptoms for over five months. The hearing officer said she relied on the reports of Dr. FUL and Dr. G in making this statement. It is true that, in his February 2000 report, Dr. FUL stated that "at many months [after the injury], reports of pain in his neck and upper extremities surfaced." However, Dr. FUL apparently was unaware of prior left arm complaints and the diagnosis of cervical radiculopathy, because of the indication that there were no upper extremity complaints for "many months." Cervical radiculopathy can affect the upper extremities. As stated by Dr. N, EMG test results show "a cervical radiculopathy involving [the] left C6 nerve root which is indicated by renervation changes recorded in the C6 innervated paraspinal and distal musculature within the left upper extremity." The cervical MRI report stated that claimant had a "sizable 3 to 4 mm circumferential posterocentrally herniated and extruded disc migrating superiorly and inferiorly through the large torn annulus, impinging upon the thecal sac and cord, resulting in significant spinal and foraminal stenosis bilaterally." This evidence is relevant to the statement that claimant did not have cervical symptoms or complaints "for over five months." We note that: (1) claimant complained of neck pain at the ER room on the day of the injury; (2) ER records show that claimant had an abrasion on his head; (3) left arm pain was documented by Mr. B, R.N., at the ER; (4) in an August 1999 letter, Dr. FR noted that claimant had sustained "bruising" to his left arm from his injury; (5) in his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) signed in October 1999 and filed on November 3, 1999, claimant noted that his injury was to his "head, back, and left arm" and a left arm injury was noted on claimant's November 3, 1999, Employee's Request to Change Treating Doctors (TWCC-53); (6) Dr. N's initial medical evaluation on November 3, 1999, about three months after the July 30 injury, notes "left arm pain" to the extent that he diagnosed "internal derangement of the left elbow"; (7) Dr. N's December 7, 1999, report notes left arm pain and, significantly, states that EMG tests had been ordered and the results are pending, indicating that Dr. N at least sought to rule out cervical nerve root problems; (8) December 6, 1999, physical therapy notes document left elbow symptoms; (9) in a December 30, 1999, letter, Dr. N states that claimant has left extremity pain and that, although claimant did not complain of neck pain on his initial visit in November 1999, he did complain of left arm pain; (10) physical therapy notes of February 2000 note neck pain and "decreased arm raising"; (11) in May 2000, Dr. G noted that claimant sometimes has numbness and tingling into his left arm; (12) Dr. G stated that "the main problem" with the issue of whether claimant's cervical problems are part of the injury is that he did not have *treatment* for his neck problems until several months after the injury; and (13) Dr. G stated that it is feasible that the neck is part of the injury.

We cannot agree that there is no evidence of cervical complaints or symptoms for over five months. Therefore, given the reasoning for the hearing officer's determination, we must remand this case to the hearing officer for reconsideration. In remanding, we recognize that extent of injury is a fact issue for the hearing officer. However, because there was some heavy reliance on reasoning not supported by the evidence, we feel we must remand and that rendering is not appropriate under the facts of this case, given the fact that there is medical evidence contrary to claimant's position regarding the ultimate conclusion that claimant did not sustain a neck injury on _____.

We reverse the hearing officer's decision and order and remand this case to the hearing officer for reconsideration. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge