

## APPEAL NO. 002481

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 October 4, 2000. With regard to the only issue before her, the hearing officer determined that the respondent's (claimant) compensable injury of \_\_\_\_\_, includes injuries to the cervical and thoracic spine.

The appellant (self-insured) appealed, detailing reports of some seven doctors which could have led to a different conclusion. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

### DECISION

Reversed and rendered.

It is relatively undisputed that on \_\_\_\_\_, while in the course and scope of her employment, the claimant slipped and fell; that her back, hip and leg hit some equipment; and that she fell on her left side on the concrete floor. The claimant testified that she was taken to the emergency room where x-rays were taken and she was given pain medication. The claimant said that she then saw Dr. R one time and then began treating with Dr. M, a chiropractor. Subsequently, the claimant was seen by some 12 or 13 other doctors, including Dr. H, an independent medical examination (IME) doctor, selected by the Texas Workers' Compensation Commission (Commission).

A progress note dated May 29, 1996, from Dr. R notes a chief complaint of lower back pain and has an impression of lumbosacral strain/sprain. No mention is made of cervical or thoracic complaints. The claimant began treating, apparently, in June 1996, with Dr. M. In an Initial Medical Report (TWCC-61) dated June 14, 1996, Dr. M diagnosed subluxation at C1 (as well as L3) and noted tenderness in the "Cervical, Thoracic and Lumbar spinal areas as well as muscle spasms." (An injury to the lumbar spine is not at issue and the appealed issue is whether the compensable injury includes the cervical and thoracic areas.) Dr. M has continued to treat the claimant with chiropractic manipulations three times a week. Apparently, in August 1996, Dr. M referred the claimant to Dr. NW for prescription of medication. In reports beginning August 14, 1996, Dr. NW comprehensively discusses the claimant's back condition but limits his remarks to the lumbar area. In a progress note dated August 16, 1999, Dr. NW comments, "[the claimant] also has some neck myofascial symptoms and some left upper extremity radicular symptoms as well. Her neck is not covered under her Worker's Comp and cannot be evaluated on her Workers' Comp evaluation." In a Specific and Subsequent Medical Report (TWCC-64) of a December 29, 1997, visit, Dr. M referred the claimant to Dr. MW for "prolotherapy." In a report dated January 5, 1998, Dr. MW references only the lumbar area and notes the claimant's "constant grossly exaggerated pain behavior." (On a TWCC-64 dated March 12, 1998, Dr. M notes that Dr. MW has "past away.") In 1998, Dr. M

referred the claimant to Dr. RW, apparently for an impairment rating (IR). On a Report of Medical Evaluation (TWCC-69) and narrative dated March 3, 1998, Dr. RW certified maximum medical improvement and assessed a 15% IR based only on the lumbar injury. (Dr. RW notes the "Chiropractic has offered little or no improvement.") No mention is made of a cervical or thoracic injury.

The claimant saw a number of other doctors over the years, none of which diagnosed a cervical or thoracic injury.

Dr. M, in responses to a Commission letter dated June 22, 2000, commented that the claimant's "cervical discomfort is secondary to her lower spine problem. The spine is one unit, but the LB causes more problems." Dr. M asks that the claimant be "evaluated."

Subsequently, Dr. H was appointed as the Commission's IME doctor for "diagnosis, causation, future treatment, and [IR]." Dr. H, in a report dated July 21, 2000, commented:

There has been some secondary discomfort in the dorsal and cervical area that I believe [Dr. M] has also treated. They feel that if the low back problem was corrected [the claimant] would be fine in the upper areas.

Dr. H went on to discuss a lumbar MRI and other low back complaints. Dr. H concludes:

**IMPRESSION:** Slip and fall with back strain. This is predominantly focused in the lumbosacral area. There have been very mild subjective symptoms in the upper dorsal area. [The claimant] has mechanical low back pain with sacralization of L5 and facet joint arthrosis at least at the last two levels with a chronic low back pain syndrome.

**DISCUSSION:** She certainly could have hurt her entire spine with this fall, or be having reactive changes in the dorsal and cervical areas that give mild discomfort. This does not appear to be a functional problem and in my opinion, I do not believe that in itself should be included as part of the compensable injury. Her major problem, which is 99.9% of her problem, exists in the lumbosacral area. She has valid complaints there, although there may be some symptom magnification present.

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In my opinion, future treatment would not include further chiropractic care. That has been carried to the ultimate, and has not really produced any long-term benefits that I can tell. She has been at it three times a week for four years. I believe her treatment should be confined to the lumbosacral area.

The hearing officer, in her Statement of the Evidence, briefly summarizes some of the medical reports, recites the parties' contentions, and comments from Dr. H's report that

the “Claimant could have hurt her entire spine in the fall, but that she is having reactive changes in the dorsal and cervical areas.” The hearing officer gives no other rationale why she found that the compensable injury included the cervical and thoracic spine. While the Appeals Panel gives great deference to the hearing officer, as the sole judge of the weight and credibility to be given to the evidence (Section 410.165(a)) in making factual determinations and recognizing that determining the extent of injury is such a factual determination, we nonetheless must look at all the evidence to determine whether the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this case, while Dr. M early on diagnosed cervical subluxation and in June 2000 made a two-sentence comment that the spine is one unit and that the cervical discomfort (without mentioning thoracic) is secondary to the lower spine, that opinion is overwhelmed by the great weight of other medical reports, some of which note symptom magnification, and others which do not comment at all on any cervical or thoracic problems. Even Dr. H, the Commission's IME doctor, while recognizing the claimant “could have hurt her entire spine,” was of the opinion that the cervical and dorsal areas should not “be included as part of the compensable injury,” and suggested that the neck pain is really due to the lumbar injury.

Consequently, we reverse the hearing officer's decision that the compensable \_\_\_\_\_, injury includes the cervical and thoracic spine as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain, *supra*. We render a new decision that the compensable injury does not include injuries to the cervical and thoracic spine.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kenneth A. Huchton  
Appeals Judge