

## APPEAL NO. 002509

Following a contested case hearing held on October 5, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the respondent's (claimant) compensable injury of \_\_\_\_\_, extends to and includes a neck injury of herniated discs at the C4-5 and C6-7 intervertebral levels. The appellant (carrier) has appealed, asserting that the hearing officer's determination is error in view of the claimant's delay in reporting symptoms of a neck injury, his delay in obtaining treatment for a neck injury, and his delay in pursuing a claim for a neck injury. The claimant's response urges the sufficiency of the evidence to support the determination of the hearing officer and points to the focusing of the first doctors on treating her right hand and wrist pain, and on her communication difficulties given that she speaks Spanish.

### DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, while working for (employer), the claimant sustained a compensable injury to her right hand and wrist. The claimant testified through a Spanish-language translator that on that date, while working as a housekeeper, she stooped over to pick up some trash near a trash can and as she attempted to straighten up, the trash can she was supporting her right arm with slipped and she fell over the trash can and backwards onto the floor on her right hand and arm. She said she reported right hand and wrist pain to the employer; that the employer later sent her to the company doctor, Dr. SR; that she complained to Dr. SR about the pain in her right hand and wrist and also in the back of her neck but all he did was give her a shot in the wrist; that Dr. SR referred her to Dr. DG who, like Dr. SR, only treated her wrist despite her complaint of pain in her neck area; and that about two months after her accident, she learned she could select her own doctor and commenced chiropractic treatment with Dr. P who advised her that she also had a neck injury. Claimant acknowledged having reported a right hand injury to the employer and listing her hand as the injured body part on her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), but explained that she thought the pain in her neck area originated with her hand and wrist injury and that she did not know she also had a neck injury until so advised by Dr. P. She further stated that the back of her neck feels numb; that Dr. P referred her to Dr. U who in turn referred her to Dr. PG, an orthopedic surgeon; that Dr. PG has recommended neck surgery; and that Dr. JR, a neurosurgeon, has concurred with the recommendation for such surgery.

Various reports of Dr. PG, who began treating the claimant in 1998, reflect the diagnoses of cervical spondylosis with right radiculopathy secondary to herniated discs at C3-4 and C5-6; carpal tunnel syndrome with de Quervain's tenosynovitis on the right; and a right "double crush" syndrome, and he explains the anatomical mechanism involved in a "double crush" nerve injury. Dr. PG reported on July 9, 1999, that he initially examined

the claimant on June 25, 1998, and that it was his opinion that her complaints of whole right upper extremity problems with numbness to her index finger and thumb may not only be a possibility of carpal tunnel syndrome but also radiculopathy from the cervical spine. He further stated that it was documented that she complained of crepitation to her cervical spine and stiffness all the way from her neck to the hand and that he then began to request approval for a cervical spine work-up. Dr. PG reported on September 21, 1999, that there should be no dispute as to the nature of the claimant's cervical pain in that an abnormal MRI demonstrated herniation and that Dr. JR and Dr. PS recommend cervical surgery.

Dr. H, the designated doctor whose assigned impairment rating of 29% included impairment for the cervical spine, reported on February 28, 2000, that although there was evidence of a preexisting cervical spine pathology, the claimant's history gives a plausible mechanism for both the hand and the neck. He further stated that the claimant's likely diagnosis is a "double crunch" syndrome where the nerve is being pressed in both the cervical and peripheral regions and that this is verified by the abnormal EMG.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge