

APPEAL NO. 002535

Following a contested case hearing held on October 11, 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 concluding that because the respondent (claimant) has shown by a preponderance of the evidence that she suffered damage to the physical structure of her thoracic and cervical spine in a work-related motor vehicle accident (MVA) on _____, the thoracic and cervical spine are part of the compensable _____, injury and the appellant (carrier) is liable for benefits. The carrier has appealed the hearing officer's determination on sufficiency of evidence grounds. The claimant urges in response that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

The parties stipulated that the carrier accepted liability for the _____, injury to the claimant. A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) form in evidence indicates that the carrier accepted liability for a lumbar spine injury. The carrier does not challenge findings that on _____, the claimant worked as a metal buyer for the employer; that part of her job duties involved visiting customers to make bids and purchase metal; that her driving to a customer's site on _____, was an activity that furthered the business affairs of the employer; and that on _____, she was involved in a single car MVA while driving to a customer's yard.

The claimant testified that on _____, a Friday, when she applied the brakes to slow down for mud on the highway, her car spun around and went into a drainage ditch with the right front corner of the car striking the side of the ditch. She said she had immediate, severe spinal pain radiating from her low back all the way up to the base of her skull; that she drove home and self-medicated over the weekend; that on the following Tuesday she saw her doctor, Dr. O, who obtained diagnostic tests and treated her with medication and physical therapy; and that she later changed treating doctors to Dr. D because she was not getting better. The claimant insisted that she had not sustained any prior injury to any area of her spine before the MVA.

Dr. O on June 1, 1999, noted the chief complaint as low back pain but he also noted neck stiffness and diagnosed her with a severe lumbar musculoskeletal strain. Dr. D's records reflect that he initially diagnosed discogenic syndrome, sciatica, and thoracic strain/sprain syndrome. He reported on March 8, 2000, that although the claimant's initial complaints and treatment focused on the low back and upper back, delays in the onset of symptoms are common and that the mechanism of injury surely suggested the probability that she injured her cervical spine as well as her thoracic and lumbar spinal regions in the MVA. Dr. L's August 31, 1999, MRI report reflected that the claimant's cervical spine was positive for disc pathology. Dr. S, who performed a required medical examination, reported

on September 8, 1999, that the claimant had no ratable impairment for a spinal injury and was magnifying symptoms. Dr. E, a surgeon who examined the claimant on November 1, 1999, diagnosed cervical sprain with muscle spasms in the upper back and a low back strain with inflammation of the sacroiliac joint and with sciatica. Dr. P, who performed a required medical examination, reported on April 3, 2000, that the claimant has no impairment from either her cervical spine or lumbar spine and that she may return to work without restrictions. The May 16, 2000, report of Dr. N, the designated doctor, reflects that he assigned the claimant an impairment rating of 11% for her cervical and lumbar spine but assigned no rating for the thoracic spine.

The claimant had the burden to prove with a preponderance of the evidence that her compensable injury extended to her thoracic and cervical spine regions. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them 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). It was within the province of the hearing officer to credit the claimant's medical evidence supporting her contention that her thoracic and cervical spine regions were also injured in the MVA.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge