

APPEAL NO. 002648

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 10, 2000. The hearing officer determined that the _____, compensable injury of the respondent (claimant) includes an injury to her neck. Appellant (carrier) appeals, contending that the hearing officer's decision amounts to a miscarriage of justice. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the scope of claimant's compensable injury includes a neck injury. Carrier complains that claimant did not tell various doctors about a neck injury and points to inconsistencies in her testimony.

The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001804, decided September 6, 2000. It was claimant's burden to establish that a neck injury was caused by her fall on _____. The record contains several medical records that mention neck symptoms or symptoms between claimant's shoulder blades, beginning with the Initial Medical Report (TWCC-61) dated a few weeks after the injury. On October 29, 1997, Dr. D stated that claimant had a bilateral dull loss of sensation and that she had neck and shoulder pain. Medical records from Dr. D's office show that claimant complained of neck pain through February 1998. An October 1998 medical record from Dr. G indicates that claimant had an exacerbation of her symptomology and states that claimant's symptoms are gradually becoming worse. The hearing officer could consider this evidence and the record as a whole in determining this issue in claimant's favor. Whether claimant reported a neck injury to certain doctors and whether claimant was consistent and credible in her testimony were issues for the hearing officer to consider in making her determinations. We have reviewed the record and we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge