

APPEAL NO. 010594

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 1, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable (cervical) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from February 18 and continuing to the date of the CCH.

The appellant (carrier) appealed, citing medical evidence which would reach a contrary conclusion. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was a driver/dockworker for an airfreight line. The claimant testified that on _____, as he was lifting and loading boxes over his head, he felt a sharp pain in his neck that traveled to his shoulders. The claimant had worked for the employer about one and a quarter years prior to this incident and it is undisputed that the claimant had diabetes and had been experiencing "numbness and tingling" bilaterally in his hands and arms for perhaps a year prior to _____ but had been able to work.

The claimant's family doctor, Dr. Z, had conducted EMG testing in January and had diagnosed bilateral carpal tunnel syndrome (CTS). Dr. Z referred the claimant to a neurologist, Dr. G, who evaluated the claimant on February 15 and diagnosed bilateral CTS with right cervical radiculopathy. Dr. G ordered a cervical MRI, but before the procedure could be performed, the claimant had his accident on _____. The MRI was performed on February 18 and revealed multilevel disc herniations, stenosis, and flattening of the spinal cord. (A report by Dr. G of _____ omits mention of any accident or incident the day before.) The claimant was referred to Dr. O for a neurosurgical consult. Dr. O, in a report dated February 24, recited a history that the claimant "aggravated the problem one week ago at work when he dropped a stack of freight." Dr. O, after examining the claimant, recommended emergency cervical surgery, which was performed on April 11. The claimant subsequently changed treating doctors to Dr. A, a chiropractor, who, in a report dated October 4, stated that in his opinion the claimant's "condition is directly related to the injury sustained on _____."

Different inferences could be drawn from the evidence. The claimant stresses that he was able to work prior to _____ and required emergency surgery afterward. The carrier stresses the claimant's preexisting symptoms and findings. 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 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).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge