

APPEAL NO. 010918

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 April 4, 2001. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) compensable (neck) injury of _____, does not extend to or include right carpal tunnel syndrome (CTS).

The claimant appealed, citing evidence which supports her decision. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed in the receiving department of a department store unloading and unpacking merchandise. The claimant testified that on _____, as she was unloading merchandise, she felt "a sharp pain" between her shoulder blades which went up to her neck and right shoulder. The claimant saw her family doctor, Dr. A, the next day and eventually had cervical spinal surgery on March 28, 2000, by Dr. C, who is the claimant's current treating doctor. The carrier has accepted liability for a neck injury.

Exactly when the claimant began exhibiting symptoms of right CTS is disputed with the claimant asserting they began on October 29, 1999, and medical records of November 15, 1999, noting "pain [with] palm pressure." Diagnostic testing was performed in December 1999 and Dr. C, in a report of January 7, 2000, for the first time has an impression of "peripheral neuropathy of the right carpal tunnel." The cervical surgery of March 2000 did not relieve the claimant's hand and wrist complaints and the carrier has denied further CTS surgery. The hearing officer does a thorough analysis of the various medical reports and their relation to other reports. Whether the claimant even has CTS is in some dispute and the claimant's principal point is that she had no hand/wrist problems before her compensable injury and that she now has symptoms which Dr. C says are CTS. As the hearing officer notes, whether Dr. H, the carrier's medical examination doctor, agrees with Dr. C's diagnosis of right CTS or whether his references to CTS are based on Dr. C's comments can be interpreted differently.

In any event, the medical evidence is sufficiently conflicting that different conclusions could be drawn. Our review of the record and the hearing officer's decision does not indicate that the hearing officer had predetermined the issue and, in fact, the hearing officer's conclusions are well thought out and supported by the record.

The claimant had the burden to prove that her compensable neck injury extended to the claimed right CTS. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and

materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts have been established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not find that to be the case.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge