

APPEAL NO. 011077  
FILED JUNE 21, 2001

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 27, 2001. The disputed issues were:

1. Is the \_\_\_\_\_ injury a producing cause of the Claimant's [appellant] cervical spine strain, after \_\_\_\_\_?
2. Did the Claimant sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_?
3. Did the Claimant have disability resulting from the injury sustained on \_\_\_\_\_?

The hearing officer determined that the \_\_\_\_\_, injury is a producing cause of the claimant's cervical spine strain after \_\_\_\_\_; that the claimant did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_, or at any other relevant date; and that the claimant has not had disability resulting from an injury sustained on \_\_\_\_\_. The claimant appealed on the basis that the ruling was against the great weight and preponderance of the evidence. The respondent (self-insured) urged affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable right arm and shoulder injury in \_\_\_\_\_. The claimant continued to work for the self-insured. Records of her initial treating doctor, Dr. B, indicate that as early as May 2000 the claimant was complaining of neck pain. At some time in the summer of 2000, the claimant was provided with a new, higher chair at work, which the claimant contended caused her to lean over with her neck bent, causing the cervical injury. Dr. B appears to have requested "Precert" for a cervical MRI on July 18, 2000.

In a benefit review conference agreement the parties agreed that Dr. T was the treating doctor. In a report dated February 26, 2001, Dr. T commented that in his opinion the claimant has "a new injury given the fact that the new chair she is using to do her job causes her to bend forward and place her neck in a fixed flexed position. There is no evidence of a disc herniation." Dr. T goes on to say that the claimant "can return to work without restrictions." In a follow-up report dated March 27, 2001, Dr. T commented on his February 26, 2001, report, saying:

She indicated that she had been previously treated for symptoms of carpal tunnel syndrome as a result of an injury sustained on \_\_\_\_\_. I did not have any medical records or history of her previous injury at the time of the visit. She did not note a previous history of cervical pain or strain.

Upon review of her records from [Dr. Bo], [Dr. B], and her previous MRI studies, it is evident that this is not a new injury but a continuation of her previous injury. Her new MRI did not indicate a disc herniation.

The claimant asserts that the self-insured caused Dr. T to “recant” his February 26, 2001, opinion and that the March 27, 2001, report was based on incorrect information when Dr. T referred to a “new MRI” because there was no prior or old MRI.

Whether or not the claimant sustained a new cervical strain was a factual determination for the hearing officer, who is the sole judge of the weight and credibility of the evidence, including medical evidence, to resolve. 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).

The decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

CONCURRING OPINION:

I concur in the result reached in this case. However, since the self-insured employer has shown that the claimant has a cervical injury due to the \_\_\_\_\_, compensable injury, which compensable injury was sustained while the claimant was working for the self-insured, the self-insured should be liable for workers' compensation medical benefits for the \_\_\_\_\_, compensable cervical injury.

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Robert W. Potts  
Appeals Judge