APPEAL NO. 011696
FILED SEPTEMBER 5, 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 (CCH) was held on June 22, 2001. With regard to the only issue before her, the hearing officer determined that the respondent's (claimant) compensable injury (stipulated to be a contusion of the left shoulder, right foot, and right wrist) of _____, extends to and includes "vascular" necrosis of the humeral head of the left shoulder, severe chronic arthritis of the glenohumeral head of the left shoulder, and "left upper extremity Erb's Palsy" but does not extend to and include rheumatoid arthritis.

The appellant (self-insured) appeals, arguing that it "has no difficulty in accepting a compensable aggravation of the claimant's preexisting conditions," but that it objects to the payment of medical benefits to treat the preexisting conditions and that "all the medical providers . . . agree that a contusion . . . would not have caused and did not cause" the claimed conditions. The claimant responds, urging affirmance.

DECISION

Affirmed as reformed.

First, we agree with the self-insured that references in the hearing officer's decision to a vascular necrosis should be avascular necrosis and we so reform the hearing officer's decision. We further note that the self-insured stipulated that the "carrier" was (College) and so stated on the Insurance Carrier Information Form required by HB2600 after June 17, 2001. However, in its appeal and correspondence, the self-insured refers to itself as the (Board). We disregard the Board designation and hold that the self-insured is the College as stipulated to at the CCH and represented to the hearing officer on the Insurance Carrier Information Form.

The claimant was an instructor at the self-insured school and on _____, sustained a compensable injury when a projector screen fell, hitting the claimant on the left shoulder, right foot and right wrist. It is undisputed that the claimant, now 59 years old, has had Erb's Palsy since birth. Over the years, the claimant took ballet and swim classes, and other forms of therapy to help her overcome a partial paralysis of her left side until at the time of the injury she could perform all the normal activities of daily living, including participation in aerobics and swimming with only some limited range of motion in her left upper extremity. It is the claimant's theory that while the compensable injury did not cause her Erb's Palsy, it aggravated the condition and whatever asymptomatic degenerative arthritis she may have had. A benefit review conference agreement in evidence established maximum medical improvement as March 3, 1999, with a four percent impairment rating. At issue is medical treatment including possible surgery for whatever the compensable injury may be.

The claimant saw at least five doctors for her condition. While all the doctors agree that the compensable injury did not cause the preexisting conditions, the evidence is in conflict whether the compensable injury aggravated or accelerated a preexisting condition. The hearing officer, in her Statement of the Evidence, cites excerpts from three of the doctors, including one of the doctors who performed an impairment evaluation for the self-insured. The self-insured, in its appeal, states that "the medical evidence presented shows only a difference of medical opinion with regard to whether Claimant suffered an aggravation of her preexisting conditions or an exacerbation." We agree but go on to note that it is the hearing officer, as the sole judge of the weight and credibility to be given to the evidence, that resolves those conflicts and differences of opinion. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

There was conflicting medical evidence presented on the issue before the hearing officer. She weighed the evidence and her determination on the issue before her 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 as reformed.

The true corporate name of the insurance carrier is **LAREDO COMMUNITY COLLEGE** and the name and address of its registered agent for service of process is

LAREDO COMMUNITY COLLEGE
WEST END WASHINGTON ST.
LAREDO, TEXAS 78043.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge