APPEAL NO. 011766
FILED SEPTEMBER 18, 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 July 6, 2001. The hearing officer held that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for her eighth quarter of eligibility and that her compensable injury did not include reflex sympathetic dystrophy (RSD) of the left upper extremity or herniated lumbar discs.

The claimant recites in detail the facts she believed are proved by her medical evidence that require a finding in her favor. The claimant also argues that RSD was never disputed until the rules of the Texas Workers' Compensation Commission were changed to make clear that a carrier would not waive a dispute to the extent of an injury by not filing a dispute within 60 days. The respondent (carrier) responds that it never agreed that RSD was part of the injury.

DECISION

We affirm the hearing officer's decision.

The evidence in this case is complicated and conflicting. The claimant was injured on _____, and has not work since that time. Her left hand was caught and crushed in an extremely heavy sliding door as she was closing it; and as she tried to stop the door, she was pulled along by the momentum, and as a result her left arm and body twisted. The carrier accepted an arm injury and disputed only the extent of injury to lumbar herniations and RSD; the claimant was earlier treated for carpal tunnel syndrome (CTS) as well as left shoulder problems.

A myelogram of the lumbar spine performed in July 1997 showed a slight bulge but no herniation, according to her treating doctor, Dr. M. Around this time, the claimant was referred by Dr. M for further testing for suspected RSD; thereafter, his medical reports listed a diagnosis that included RSD.

On May 6, 1998, Dr. M certified an impairment rating (IR) that considered "possible" RSD but assigned a zero percent IR for the RSD. Overall, he assigned "approximately 15%" for lumbar impairment and CTS. After several requests from Dr. M, a lumbar MRI was approved and performed on August 21, 2000. The radiologist's report stated no evidence of herniation. Dr. M said he personally reviewed the films and felt that the claimant had a herniated disc at L2-3, but said that the radiologist had "missed" this.

On March 19, 2001, Dr. M identified the principal condition that caused an inability to work in any capacity as the low back herniation, which resulted in shooting and radiating pain, preventing the claimant from lifting, stooping, walking, and sitting for any length of time. At one point, Dr. M noted a difference of color in the two arms as part of his opinion

that she had RSD, although most medical reports in evidence are silent about any color changes.

The claimant's RSD also has support in the reports of Dr. D, an anesthesiologist and pain management specialist, who noted in April 1999 that the claimant's diagnosis of what he referred to as complex regional pain syndrome was spreading and was directly related to her injury. In 1998, a spinal cord stimulator for pain relief that was implanted by Dr. D, which caused infection to the claimant and abscess in the thoracic spine, had to be removed. A thoracic laminectomy was performed on October 29, 1998.

Although most of Dr. D's reports refer to the claimant's left arm as the affected one, on February 11, 2000, Dr. D wrote that the claimant's pain was mainly in her right arm, and that this pain, as well as myofascial pain syndrome and depression, would preclude her from ever working. Dr. D also wrote that the claimant's RSD was proven beyond a doubt by stellate ganglion blocks administered by his former associate.

The designated doctor, Dr. L, an orthopedic surgeon, found objective clinical signs of RSD on September 10, 1998. Dr. L noted in later correspondence that he had "taught" RSD and related complications in his 27 years of practice.

The evidence that the hearing officer recited in finding against the claimant on RSD was the report of Dr. B, whose specialty is physical medicine and rehabilitation. Dr. B examined the claimant on or about February 22, 2000. He noted that the claimant moved easily around the room, without great difficulty. He also noted that she had intact pin prick sensations on the upper extremities, symmetrical measurements, palpable and symmetrical distal pulses, and symmetrical temperature on the hands. He found no clear evidence of RSD.

A required medical examination doctor, Dr. DD, ordered a bone scan, reviewed her records, and ordered a functional capacity evaluation (FCE). Although the claimant contended that she was never examined by Dr. DD, his February 26, 2001, report stated that he saw the claimant that day. Dr. DD and the person who performed the FCE are the only health care entities who stated that the claimant had symptom magnification. Dr. DD stated that as the claimant's bone scan the month before was normal, he could not agree that she had RSD, or at least an active case. (Dr. M's response to this was that a bone scan was not diagnostic of RSD after six months.) Dr. DD stated that based on the FCE, the claimant could work 4 to 6 hours at the sedentary level with frequent opportunity for postural changes.

Asked why she did not seek work at all during the SIBs qualifying period, the claimant said it was because her doctors had not released her. She agreed that she may have curtailed some effort on the FCE but only because she was cautioned by her doctors to avoid activity that could cause additional injury.

After a review of the medical evidence, we are persuaded that the hearing officer did not commit reversible error in his assessment of weight and credibility of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The fact that the later-diagnosed lumbar herniations followed the claimant's injury in time does not establish the causal connection, especially when the amount of time has passed as in this claim. While there is earlier evidence of an RSD diagnosis, there is a legitimate difference of medical opinion reflected in this case as to whether or not the claimant's chronic pain results from this condition, and it is the hearing officer's responsibility to resolve the difference in his decision. Absent a written agreement between the parties, the carrier was not precluded from raising a question about the existence of RSD and its relationship to the compensable injury just because it might have paid for evaluation and treatment earlier.

Finally, as to entitlement to SIBs, we likewise agree that the hearing officer's decision is sufficiently supported. It is clear that the hearing officer also believed that the claimant had some ability to work but failed to search for employment. We note that he has found that the extended injuries are not connected to the compensable injury and they are the only injuries that are included in Dr. M or Dr. D's narratives as to why the claimant cannot work. His decision may also be affirmed for this reason.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company

v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here, and affirm the decision and order.

The true corporate name of the insurance carrier is **ACE USA/OR** and the name and address of its registered agent for service of process is

ACE USA/OR
13706 RESEARCH BOULEVARD, SUITE 209
AUSTIN, TEXAS 78750.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge