

APPEAL NO. 012155
FILED OCTOBER 24, 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 July 25, 2001. She held that the appellant's (claimant) compensable injury did not extend to brachial neuritis and to his cervical spine. She further held that the respondent (carrier) had not waived the right to dispute the extent of injury.

The claimant has appealed, arguing that his case was prejudiced by the hearing officer's lack of understanding of the nature of his disease, and by exclusion of an exhibit in which some understanding of his condition would have been conveyed. He further argues that this was not an extent-of-injury case (so that it could not be waived by failure to dispute it) but is, rather, a case of increased severity of the accepted compensable injury. The claimant challenges the jurisdiction of the hearing officer, arguing that it was the Medical Review Division which should have considered the dispute. The carrier responds that the evidence is supported by the record and points out that there were no medical records which diagnosed the claimant with "brachial neuritis." The carrier further asserts that the claimant was bound by a stipulation as to the nature of the accepted compensable injury. The carrier also agrees that there was no waiver.

DECISION

We affirm the hearing officer's decision.

At the outset, we note that our review is limited to evidence admitted at the CCH. Whatever might be "well documented" outside the matters produced at the CCH cannot be considered. It is the burden of the party asserting further injury to bring forward probative evidence in support of that contention.

We would also note that as the entire CCH concerned whether the injury had spread to cause further injury beyond that which the carrier accepted, we will not interpret the stipulation that the claimant sustained injury to the area of both elbows, forearms, and wrists as limiting the scope of injury to only those body parts. Plainly, this stipulation was made for the purpose of establishing those parts of the injury that were not disputed; it was not intended to obviate the hearing that followed that stipulation.

BRIEF FACTS

The claimant sustained a repetitive trauma injury with the date of injury being _____. This was stated; there was no testimony about the tasks that were deemed repetitive or traumatic that led to this injury, although some medical records note that the claimant was typing on a computer terminal for most of his day. He said that he did not lose time due to this injury and continued to work until January 22, 2001. It was the claimant's contention that his injury had spread to include damage and harm to the brachial

and cervical areas. However, the claimant also contended that he had been bothered with neck and shoulder pain from the inception of his injury.

The claimant was in two motor vehicle accidents (MVA) in _____ and _____. He testified that both injuries caused aggravation to his arms and wrists. There was conflicting medical evidence as to the nature and extent of the claimant's injuries, and the only reference to "brachial neuritis" was a secondary reference in another record.

EXCLUSION OF EVIDENCE

At the beginning of the CCH, the carrier objected to two exhibits offered by the claimant: a general article of questions and answers from the internet about cumulative trauma disorders, apparently published by an organization that is identified only by a series of letters in the article, and a printout of the nervous system from an anatomy atlas, which was annotated by the claimant's representative. The carrier objected to the qualification of either as expert medical evidence. The hearing officer sustained the objection.

We do not agree that the hearing officer erred by excluding these exhibits. Even if they had been admitted, it does not appear that they would be entitled to more than scant weight. It was the burden of the claimant to prove causation in his case, under the particular facts of his case. Articles discussing general cases do little to meet this burden of proof. We cannot agree that that exclusion constituted reversible error.

EXTENT OF INJURY

Although the claimant now argues that the case posed a reasonable and necessary medical treatment issue that was the jurisdiction of the Medical Review Division, we note that no objection to jurisdiction was raised at the CCH. Because the threshold issue was whether certain regions of the body were part of or flowed from the original compensable injury, we cannot agree that the hearing officer was without jurisdiction to hear this dispute. The claimant's argument that the dispute represents only a "change in the severity" of the original injury and treatment for symptoms of the accepted injury, appears to be an exercise in semantics ancillary to his argument at the CCH that the carrier waived the right to dispute the additional conditions in issue.

The hearing officer did not err in finding that the claimant's compensable injury did not extend to (or include) brachial neuritis or cervical spine injury. There was no testimony about activities at work which impacted the claimant's neck, or any evidence offered to explain how cervical conditions or any brachial syndrome would have resulted from the claimant's upper extremity disease which affected his forearms. However, there was evidence of two MVA collisions since the date of the compensable injury, at least one of which the claimant agreed affected his shoulders and neck. 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. 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).

Having reviewed the record, we cannot agree that the hearing officer's decision is against the great weight and preponderance of the evidence and affirm the hearing officer's decision.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge