

APPEAL NO. 030763  
FILED MAY 14, 2003

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 March 10, 2003. The hearing officer resolved the two disputed issues by deciding that the respondent's (claimant) compensable injury of \_\_\_\_\_, extends to and includes his chronic headaches, myofascial pain syndrome, and degenerative disease (spondylosis) at C5-6 and C8-T1, and that the compensable injury is a producing cause of the claimant's need for treatment for his right shoulder strain, thoracic spine, and cervical spine, including the disc herniation at C6-7 and cervical radiculopathy relative to the right C7 nerve root. The appellant (carrier) appealed, contending that the evidence establishes that the claimant's compensable injury has resolved and that the claimant suffers from ordinary diseases of life. The claimant responded, requesting affirmance.

DECISION

Affirmed, as reformed herein.

Initially, we note that one of the disputed issues identified in the benefit review conference report and agreed to at the CCH referenced, in part, degenerative disease (spondylosis) at C8-T1, and the hearing officer determined that the compensable injury extends to and includes degenerative disease (spondylosis) at C8-T1. Our review of the CCH record reflects that the diagnostic tests, including MRIs, CT scans, and myelograms, all referenced a C7-T1 level, but not a C8-T1 level. In 1993, the claimant had a fusion done at C6-7, and in 1997 he underwent a C7-T1 foraminotomy, with decompression of the C8 nerve root. The claimant's treating doctor opined that the fusion (at C6-7) accelerated the degeneration (spondylosis) at the levels above and below the fusion. According to the diagnostic tests, the level above the C6-7 fusion was C5-6, and the level below the fusion was C7-T1. We believe that the disputed issue should have referenced C7-T1 and not C8-T1 because all of the diagnostic tests reference a C7-T1 level, and not a C8-T1 level; the 1997 surgery was performed at C7-T1 (with decompression of the C8 nerve root); the treating doctor references the level below the C6-7 fusion, which would be the C7-T1 level; and the 1997 CT scan diagnosed spondylosis at the C7-T1 level. In other words, there does not appear to be any C8-T1 level, although there is a C8 nerve root that was decompressed during the surgery at C7-T1. Accordingly, we reform the hearing officer's Finding of Fact No. 2, Conclusion of Law No. 5, and decision to substitute C7-T1 for C8-T1. Our reformation is not intended to exclude from the compensable injury what the treating doctor identifies as a C8 radiculopathy (the claimant has also been diagnosed as having a C7 radiculopathy, which the hearing officer addressed in the second issue).

Conflicting evidence, including conflicting medical opinions, was presented at the CCH on the disputed issues. The hearing officer is the sole judge of the weight and

credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **FARMERS INSURANCE GROUP/MID-CENTURY INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**FRED B. WERKENTHIN  
100 CONGRESS AVENUE  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Veronica Lopez  
Appeals Judge