APPEAL NO. 950235

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001, *et seq*. (1989 Act). On January 18, 1995, a hearing was held in (city), Texas, with presiding. He determined that appellant (claimant) did not show that she had injured her neck in a fall at work on (date of injury), and incurred no disability. Claimant asserts that medical evidence shows that claimant's neck was injured on (date of injury), and that she has had disability. Respondent (government employer) replies that the hearing officer should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) without ever testifying as to what function the employer performed. She was cleaning when she tripped and fell across an ashtray and bicycle on (date of injury). She reported injury to her ribs on the left and her left knee. She testified that she first felt neck pain in September, approximately two months later. Although she had been in automobile accidents in 1981 and 1988, she said she only hurt her face in them, not her neck. She agreed that until February 1994 she had been paying for medical treatment for her neck through her health insurance. In February 1994 she quit work, stating that she needed to be closer to her father in another town, and her health insurance lapsed. (Dr. C) then wrote, in March 1994, that her original injury was "acute cervical strain" that evolved into "occipital neuralgia and is directly related to the (date of injury) accident." Dr. C did not state his basis for this conclusion and did not say whether he knew of claimant's complaints of neck pain predating her 1993 fall.

In February 1993, prior to the (month year) fall, claimant was treated at a hospital for complaints of tightness in the left back of her neck, left arm numbness and tingling, with muscle spasm observed in the left neck. Her history at that time was recorded as indicating a similar occurrence once before. Approximately one year later, in March 1994, (Dr. W) recorded that claimant reported her initial 1993 injury as to the knee and chest wall but then said she had "gradual onset of numbness and tingling in the posterior neck, into the left cheek and into the left arm occasionally, and into the back of her head."

Other than his declaration in March 1994, Dr. C does not discuss the cause of claimant's condition in any other exhibit in evidence. He does relate that he began seeing claimant on December 28, 1993, for her complaints of "occipital headaches and tightness with intrascapular pain, left greater than right, into the arm on the left with tingles." On February 15, 1994, Dr. C said that claimant had been under his care, not since December 28, but since November 16, 1993, with a diagnosis of cervical herniated disc. One MRI is in evidence; it was done on November 11, 1993, and was reported as showing a "minimal disc bulge" at C5-6.

Claimant also introduced two statements of (Dr. F) dated (date of injury) and August 25, 1994. In the first letter, Dr. F finds the November 11, 1993, MRI as not dispositive and calls for more testing. He then adds in this letter, that "based on the history" the 1993 fall aggravated her degenerative disc disease. He next wrote in August that the records show claimant had complained earlier of neck pain and arm numbness "much the same as she complains of at the time of our independent medical examination." He referred to his answer regarding aggravation given in the July letter, adding now that while a fall can aggravate a problem, he "would not expect the passage of some three months prior to complaining of new neck problems;" he then stated this more strongly by saying:

> It seems to me to be unreasonable to expect an incident of a fall on (date of injury), to present itself with problems some three months later. This is especially true since it was documented that she had symptoms long before her fall.

(Dr K) gave a second opinion as to surgery in March 1994. He could not pinpoint the problem for surgery and suggested more testing. He also commented that with a two month delay between the fall and claimant's headaches, "it is hard for me to identify the injury of (date of injury) as being the initiating factor in her neck problems."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The Appeals Panel has previously cited Charter Oak Fire Insurance Co. v. Levine, 736 S.W.2d 931 (Tex. App.-Beaumont 1987, writ ref'd n.r.e.) as allowing a fact finder broad discretion in weighing medical evidence, pointing out that at least four doctors in that case had released Levine to work but another provided some evidence of inability to work, allowing the fact finder to find Levine unable to work. In Texas Workers' Compensation Commission Appeal No. 93119, decided March 29, 1993, fact finders were encouraged to compare medical evidence on the basis of thoroughness, credibility, consistency, accuracy, and the basis it provided for opinions set forth. *See also* Texas Workers' Compensation Commission Appeal No. 941024, decided September 15, 1994, which also cited Gregory v. T.E.I.A., 530 S.W.2d 105 (Tex. 1975), in stating that a fact finder did not have to follow the conclusions of an expert.

While the hearing officer was presented with medical evidence that would have supported either a ruling that injury to the neck occurred in the course and scope of employment or did not, we cannot say that the evidence is insufficient to support the findings of fact made. On the contrary, one could observe that the opinions provided by Drs. F and K provide some basis for the skepticism each sets forth in regard to claimant having her neck injured by the 1993 fall. Not the least point made is that claimant was apparently voicing similar complaints prior to the fall that she only began to again mention two months after the fall. Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993, also found that it was a fact question for the finder of fact when pain in the neck did not occur within seven weeks. *Compare to* Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992, which reversed a decision that

a later reported injury was not part of the serious, compensable injury. *See also* Texas Workers' Compensation Commission Appeal No. 950148, decided March 3, 1995, which affirmed a decision of no compensable injury based in part on evidence that medical records showed such claimant had pain in the same location prior to the incident in question.

With no compensable injury to the neck and with no indication that the rib or knee injury had kept claimant from work, which she continued to do from July to February, the conclusion of law that claimant incurred no disability is sufficiently supported by the evidence. Finding that the decision and order set forth at the conclusion of the hearing officer's opinion are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge