APPEAL NO. 950304

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 10, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant's (claimant) left arm was not part of her compensable injury of (date of injury), that maximum medical improvement (MMI) was reached on March 2, 1993, with a 14% impairment rating (IR), as found by the designated doctor, (Dr. H), and that respondent (carrier) adequately disputed compensability of any injury to the left arm. Claimant asserts that the great weight of the evidence, citing medical evidence, indicates that the left arm problem is compensable, that the IR should have included the left arm, and that carrier did not timely dispute compensability of the left arm. Carrier replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) for over 10 years in different jobs; she testified that the one she held on (date of injury), involved repetitive lifting of products that weighed in excess of 25 pounds in and out of kilns . She had hurt her right arm in a single bumping accident in 1990; it gave her no problem for over a year, but then she began to have pain in the right arm in 1992 and reported this to medical personnel working with employer on (date of injury). The carrier did not dispute a new date of injury of (date of injury), to the right arm, and claimant saw (Dr. T) in 1992, for a short period in 1993, and then again in 1994 for the right arm. Dr. T and Dr. H found MMI, and claimant's dispute with this determination is that it does not include the left arm injury.

Claimant testified that her left arm now is worse than her right. She likened the left arm condition to "overuse" describing how she tried to protect the injured right arm. Texas Workers' Compensation Commission Appeal No. 941331, decided November 18, 1994, allowed compensability for an "overuse" injury when caused by overuse of the previously uninjured extremity from work activities. That appeal distinguished other "overuse" repetitive problems, which were held not to be compensable. Claimant did not testify that the overuse of the left arm occurred on the job.

Claimant provided a statement on July 6, 1994, in which she stated repeatedly that her left arm was not a problem. She said, "I have never had any trouble with my left arm." She agreed in her testimony that she never gave notice to the employer of the left arm and filed a notice of claim on July 20, 1994, asserting injury to both the right and left arms.

No medical record in evidence attempts to tie any problem with the left arm to claimant's injury of (date of injury). Only two occupational therapist notes in April 1994 mention the left arm as a problem; they say, "both upper extremities" are tender, that claimant was "complaining of pain with the left upper extremity at this point" (what point is not explained), and claimant has "decreased range of motion of the left upper extremity". Both Dr. T and

(Dr. F), whom claimant saw on referral from Dr. T, say that claimant should avoid repetitious work that would harm the "upper extremities."

Claimant says that carrier paid a bill of Dr. F in April 1993 that shows it had notice of treatment of both arms on March 2, 1993. Dr. F's report of March 2, 1993, is relied on by claimant as giving notice; it states that her chief complaint is "right arm pain." Dr. F recites a history of injury to "her arm" in 1990; she "felt a pull in her forearm" in (month year). "Currently, she complains of pain in her forearm and elbow which radiates into her shoulders and neck." Dr. F adds that at night "her forearm aches." As can be seen, these points all address arm pain in the singular. In performing a physical examination, Dr. F did observe, "[s]he is tender over the pronators in both forearms . . ." and "no atrophy in her hands." "[s]he is tender about base of the neck on both sides and over the trapezius bilaterally." Dr. F also compared the right and left in strength, "[g]rip strength on the right is 32 and on the left is 38. Pinch strength on the right is 7 and on the left is 12." Dr. F advised claimant to modify her work. He said in his last paragraph, "[h]e (sic) current problems are directly related to repetitive duties at work." (He never says that he considers tenderness or grip strength of 38 or pinch strength of 12 to be a "problem" he is addressing.) As stated, in July 1994, claimant said that she had never had trouble with her left arm.

Claimant also says that the TWCC form 21 carrier filed in July 1994 was not adequate to dispute compensability because it referred to an injury date of February 1994. Dr. T testified that claimant in March 1994 also complained of a "pulling sensation" to the left forearm, when being seen for the right elbow. He added that his staff had obtained information from claimant relating this development to February 1994 and evidently placed a new date of injury on the top of his form with that date on it.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The hearing officer could consider that the July 25, 1994, dispute by carrier, which said that it did not dispute a (date of injury), claim of injury but did dispute a 1994 injury based on no timely notice and not being in course and scope of employment, does refer to Dr. T's statement of a 1994 injury and to the possibility that a left arm injury was being asserted by his reference to "pulling sensation in left forearm." No evidence shows that the "left arm" had ever been considered as injured before as carrier provided benefits for the (date of injury), injury. The hearing officer could also question whether such a report, without any comment by the doctor to the effect that claimant ties this development to the original injury, would adequately put the carrier on notice as called for by Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 (Rule 124.1) which requires "facts showing compensability." This same question would apply to the comments by the occupational therapist on two occasions in April 1994 and to the observations of "tender" made by Dr. F. If there was a question as to whether such medical comments related notice of injury by claimant, the hearing officer could also consider claimant's own statement given in July 1994 that she had never had trouble with her left arm. The finding of fact that the carrier adequately disputed left arm injury is sufficiently supported by the evidence.

In addition to the medical records in evidence, Dr. T testified that although some comment was made by himself, and previously by Dr. F, relative to the left arm, claimant never sought treatment for the left arm. Dr. T said that he had no reason to base the left arm condition on the 1992 injury.

Dr. H addressed MMI and IR without including the left arm in either. When queried by the Texas Workers' Compensation Commission about whether the left arm should have been included, Dr. H replied that he had searched the medical records again and found no indication that claimant's left wrist was injured "with the injury of [date of injury]." Dr. H specifically alludes to the occupational therapist comments and questioned whether Dr. T's comment in March 1994 meant to say "pulling sensation" to the left or right forearm. He said that in his examination of claimant in August 1994, he believed claimant had mentioned that she was developing some symptoms on the left that were similar to the right but that this had not occurred before 1994.

The medical evidence does not indicate left arm symptoms were caused by the (date of injury), injury. In addition, claimant only took issue with Dr. H's opinion as to MMI and IR because it did not include left arm injury within the compensable 1992 injury he was evaluating. The evidence sufficiently supports the finding that claimant did not injure her left arm in 1992 and that the designated doctor's opinion was not overcome by the great weight of contrary medical evidence.

The decision and order set forth at the conclusion of the hearing officer's decision are sufficiently supported by the evidence, and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge