

APPEAL NO. 980176
FILED MARCH 5, 1998

A contested case hearing (CCH) was held in (City), Texas, on December 3, 1997, and on January 2, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer, resolved the disputed issues by determining that the _____, compensable injury of the appellant (claimant) did not extend to her neck and that the respondent (carrier) did not waive the right to contest compensability of the alleged neck injury. Claimant has appealed both the extent-of-injury and the carrier waiver issues. The carrier has responded that the evidence sufficiently supports both challenged determinations.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that claimant's _____, injury did not extend to her neck. The claimant had the burden to prove the extent of her injury. Texas Workers' Compensation Commission Appeal No. 951378, decided September 29, 1995. The hearing officer is the judge of the weight and credibility of the evidence, resolves conflicts in the evidence, and is free to believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that on _____, she was working for (employer) as an inventory clerk. She said she was injured at work that day when she was trying to pull down an overhead door with a tool and the tool slipped and hit her on the head. Claimant testified that the injury caused a cut and bruises on her head and that, ever since _____, she has had headaches and neck pain, a loss of sensation in her arms and shoulders, and neck pain that travels to her hands. She said she initially saw (Dr. WA), whom she said was the "company doctor," but that she changed to (Dr. BO) in September 1994 because her condition had not resolved. Claimant testified that she had another compensable injury to her eye, which medical records indicate happened in (year), and a compensable elbow injury on (2nd injury date).

In a _____, Initial Medical Report (TWCC-61), Dr. WA did not mention a neck injury. In a February 25, 1994, "application for treatment" with Dr. BO, claimant said she

had continuous neck pain and, regarding how the “condition developed,” she said, “hit on head at work by steel rod while pulling down faulty door.” In a July 18, 1994, report, (Dr. ST), the designated doctor for claimant’s unrelated (2nd injury date), elbow injury, discussed and rated a neck injury for claimant’s impairment rating (IR) for that (year 2) injury. The record contains a June 12, 1996, letter from a Texas Workers’ Compensation Commission (Commission) benefit review officer (BRO) that asks Dr. ST to submit an amended Report of Medical Evaluation (TWCC-69) which does not include in the IR for the (year 2) injury any impairment for a neck injury because “[claimant’s] cervical condition is the result of a prior injury in [(year)].” In a May 1996 letter, (Dr. SC) states that claimant has ongoing cervical problems, including cervical spasm and that she has cervical disc disease. He said claimant presented regarding a work-related injury, but did not state which injury. In an October 20, 1997, letter, Dr. BO stated that claimant’s neck problems began with “the initial blow to the head.” In an undated letter, (Dr. X) stated that he saw no relation of claimant’s cervical treatment to either her (injury date), or (2nd injury date), compensable injuries.

The hearing officer reviewed claimant’s medical records and heard the testimony from claimant regarding her neck problems after her _____, injury. The hearing officer judged the credibility of the testimony and the medical evidence, resolved this fact issue, and determined that claimant’s injury did not extend to her neck. We will not substitute our judgment for his because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Regarding the carrier waiver issue, the hearing officer determined that claimant did not show that carrier was fairly informed of the work-related nature of the claimed neck injuries, that carrier filed a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) on December 12, 1994, disputing compensability of the neck injury, and that carrier did not waive the right to contest the compensability of the neck injury. Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. See Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 124.1(a) and 124.6(c) (Rules 124.1(a) and 124.6(c)).¹

It was undisputed that carrier filed its TWCC-21 on December 12, 1994, disputing that the _____, injury extended to claimant’s neck. The dispute at the CCH concerned the date when carrier had sufficient notice regarding the claimed injury to the neck. Claimant asserted that her exhibits 9F and 9G gave notice to carrier that the _____, injury extended to the neck. Exhibits 9F and 9G state a date of injury of (2nd injury date), rather than _____. Both also state that the claim is not related to employment, “current or previous.” Therefore, those documents did not give notice to carrier of a neck injury from the _____, incident. Dr. BO’s records indicate that claimant saw him in March and April 1994, and that he billed claimant, rather than carrier, for those services. The next entry for

¹The parties did not raise the issue of reopening in this case. See Section 409.021(d).

treatment is in August 1994, and there is nothing to indicate that carrier was billed for or notified about treatment before November and December 1994. No other medical record indicates that carrier received written notice of a neck injury related to the _____, injury more than 60 days prior to its December 12, 1994, dispute. We have reviewed the record and conclude that the hearing officer did not err in determining that carrier did not waive the right to contest the compensability of the neck injury in this case.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge