APPEAL NO. 980250
FILED MARCH 24, 1998

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 January 15, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With regard to the issues at the CCH, she determined that the appellant's (claimant) _____, compensable injury does not extend to her low back and left upper extremity. The claimant appeals, seeks a reversal of the decision and argues that she proved her injury extends to her low back and left upper extremity. The respondent (carrier) responds and seeks an affirmance of the decision.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified at the CCH that the injury occurred when her foot got stuck in a wooden pallet and caused her to fall to the ground. She said she broke her fall with her right hand and then landed on the right side of her body, injuring her low back, right wrist, left foot, left ankle, and left arm. On the day of the injury, she went to the emergency room, where x-rays of her left foot and right wrist were normal. On November 22, 1995, her treating doctor, Dr. V, diagnosed a left foot and ankle sprain and a right wrist contusion. In the "prognosis" box of his Initial Medical Report (TWCC-61), Dr. V recorded "expect 2 weeks recovery." On his March 3, 1996, Specific and Subsequent Medical Report (TWCC-64), Dr. V recorded the claimant's complaints as "body feeling 'weird;' [complain of] diaphoresis; persistent mid. [right] forearm pain; left (upper ulnar side)," and stated that her "current symptoms are questionable in relationship to w/c injury." On April 15, 1996, a neurologist Dr. V referred the claimant to, Dr. C, performed lumbar sympathetic nerve blocks to treat her right upper extremity pain. On August 13, 1996, a neurologist, Dr. C referred her to Dr. E, noted the absence of any left upper extremity symptoms and ruled out both a hyperextension injury of the right ulnar nerve and lumbosacral radiculopathy. On October 30, 1996, Dr. E explained that the only opinion he had regarding whether her compensable injury extended to her left upper extremity was based on the history she provided. On January 1, 1997, Dr. V remarked that her "back pain is <u>not associated with original injury</u> [Emphasis in original]."

The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993. The hearing officer, in the "Statement of the Evidence" portion of the decision, commented on the period of time between the compensable injury and the documented complaints of low back and left upper extremity complaints. The claimant

testified that she complained to Dr. V's office personnel but they must not have communicated her complaints to Dr. V. Although some of the medical records did mention the claimant's low back and left upper extremity, the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

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 and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge