

APPEAL NO. 033041  
FILED JANUARY 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 27, 2003. The hearing officer determined that the respondent's (claimant) \_\_\_\_\_, compensable injury includes the cervical spine.

The appellant (carrier) appeals, basically on sufficiency of the evidence grounds, asserting that the claimant initially (and for several days) failed to mention her cervical complaints and that because the issue dealt with the cervical spine the hearing officer was precluded from finding a soft tissue injury to the neck. The claimant responds, urging affirmance.

DECISION

Affirmed as reformed.

We first note some procedural inaccuracies in the decision, namely, the hearing officer's decision identifies only eight carrier exhibits when in fact there were nine and the record shows nine carrier exhibits were admitted. The decision also states that the carrier called no witnesses when in fact Dr. S was called and testified on behalf of the carrier. We reform the hearing officer's decision to reflect that Carrier's Exhibit No. 9, a consultation report, was admitted and that Dr. S was a carrier witness.

On the merits, the claimant, "a packer," testified how she slipped and fell on her buttocks, injuring her low back, hip, and neck on \_\_\_\_\_. Although not clear, the carrier has apparently accepted a low back (and perhaps left hip) injury. The gist of the carrier's complaint is that the claimant did not initially make any complaints about cervical pain at an emergency room, at an employer-selected clinic, or to an investigator who interviewed the claimant the next day on (day after date of injury).

The hearing officer, in the discussion portion of his decision, commented that the claimant's testimony about her failure to initially mention cervical complaints was "not convincing." The hearing officer nonetheless found a "cervical strain injury" based on the treating doctor's records and reports. We have frequently noted that the hearing officer is the sole judge of the weight and credibility to be given the evidence (section 410.165(a)) and as such the hearing officer may believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In this case, the hearing officer apparently discounted some of the claimant's testimony but accepted the records and reports of the treating doctor to establish a cervical strain injury. We perceive no error by the hearing officer in doing so and the hearing officer's determination is supported by sufficient evidence.

The carrier also argues on appeal that the “issue was already formed as being an extent injury related to the ‘cervical spine’ and not to the soft tissues of the neck.” We disagree. When the issue was announced, the hearing officer sought clarification whether the “cervical spine” referred to the “boney cervical spine” or the cervical region. The claimant replied “cervical region” and the carrier replied “Carrier denies the entire region.” (Counter 60 on the audiotape.) The carrier's complaint on this ground is totally without merit.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We hold that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order, as reformed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Chris Cowan  
Appeals Judge