

## APPEAL NO. 931053

On October 18, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). The issue at the hearing was whether the compensable injury sustained by the appellant (claimant) on (date of injury), extended to an injury to his heart and low back. The hearing officer determined that the compensable injury sustained by the claimant on (date of injury), did not extend to his heart or low back, and decided that the respondent (carrier) did not owe workers' compensation benefits for injuries to the claimant's heart or low back. The claimant disagrees with the hearing officer's decision. The carrier responds that the decision is supported by the evidence.

### DECISION

The decision of the hearing officer is affirmed.

The hearing officer's decision was distributed to the parties on November 9, 1993, and the claimant states that he received the decision on November 12, 1993. The claimant's initial appeal was timely filed with the Texas Workers' Compensation Commission (Commission) on November 19, 1993, and will be considered. However, the claimant's subsequent appeal postmarked December 1, 1993, which was received by the Commission on December 3, 1993, was not filed within 15 days after the date of receipt of the hearing officer's decision as required by Section 410.202(a) and it will not be considered.

The claimant's pre-employment physical on February 26, 1992, for his job at the employer, (employer)., revealed "degenerative changes" in his spine and a narrowing of the L4-5 disc space. On (date of injury), while at work, the claimant was thrown from the forklift he was driving when the forklift flipped over on its side. In a recorded statement taken in April 1992, the claimant told the carrier's claims representative that he landed six or eight feet from the forklift; however, at the hearing the claimant testified that he was thrown 40 to 50 feet. The claimant said that his feet, ankles, and legs hit a steel dock plate and that he landed on his hands and head, slid a few feet, and fell on his "rumpy dump." He did not lose consciousness. The carrier conceded at the hearing that the claimant sustained compensable injuries to his left ankle, both wrists, and his right shoulder.

The claimant testified that he has had pain in his low back since the accident of (date of injury); however, medical records from the hospital emergency room he was taken to on (date of injury) indicate that he did not complain of any back pain. The emergency room records also do not indicate any complaints of chest pain. The claimant began treatment with (Dr. E) in early April 1992. He said he began to complain to Dr. E of low back pain as early as May 1992. Dr. E stated in a report dated March 12, 1993, that x-rays of the claimant's lumbosacral spine were taken on the claimant's first visit to him and that the x-rays indicated a herniated disc and disc degeneration at the L3-4 and L4-5 levels and calcium deposits and osteoarthritic changes. Although the records of Dr. E which were in evidence do not note complaints of low back pain until January 6, 1993, a report dated

October 20, 1992, from (Dr. R), a neurologist, indicates that the claimant was complaining of lower back pain by that date, and (Dr. M), who examined the claimant in December 1992 at the request of the carrier, noted that the claimant's medical records indicated complaints of a low back problem in June 1992. Dr. R said that her findings were compatible with left S1 radiculopathy.

An MRI scan of the claimant's lumbar spine was performed on October 13, 1992. The MRI scan revealed disc protrusions at the L1-2, L2-3, and L3-4 levels, and a disc herniation at the L4-5 level. In the report dated March 12, 1993, Dr. E referenced the x-ray and MRI findings relating to the claimant's lumbar spine and stated that "I judge these injuries to be directly related to the work accident." In a letter dated July 28, 1993, Dr. E opined that the claimant's limping and use of crutches from his left ankle injury would put an abnormal stress on the low back and would precipitate a low back condition. And, in a letter dated August 2, 1993, Dr. E stated that "I strongly feel that the back condition is definitely related, whether directly or indirectly, to his [claimant's] original work-connected injury on (date of injury)."

The claimant underwent several operations on his left ankle, developed an infection, and underwent several more operations on the left ankle. After an operation on the left ankle on June 23, 1992, the claimant was given antibiotics and it was noted in the operation report that he had a "brief run" of "ventricular tachycardia" and that in the post-operative period the claimant had a "15 beat run of idioventricular rhythm and since that time has had multiple and multi-focal premature ventricular beats." The claimant was referred to (Dr. Q), a cardiologist, for consultation. In letters dated March 11 and July 31, 1993, Dr. Q stated that he believed that the claimant's cardiac arrhythmias are directly or indirectly related to his injury. Dr. Q said that the claimant suffered a possible myocardial contusion because the claimant developed chest pain and arrhythmia immediately after the accident. It is noted that the hospital emergency room report for (date of injury), is negative for chest pain, Dr. E's records do not indicate complaints of chest pain, and arrhythmia is not noted in the medical records until June 23, 1992. Dr. Q also opined that the claimant's cardiac arrhythmia may be secondary to the infection he developed in his left leg.

On September 28, 1992, the claimant was examined by Dr. M at the request of the carrier. In an extensive and detailed report dated December 31, 1992, Dr. M reviewed the claimant's medical history, reports, diagnostic tests, and treatment, and set forth his findings on physical and neurological examinations. Dr. M opined that the claimant's lumbar spine pain was not related to his injury of (date of injury), and that his low back pain is not work related. He also stated that the use of crutches was not a cause of the low back pain. In a subsequent report dated March 15, 1993, Dr. M opined that "[t]he injury did not cause his cardiac irregularity, nor even contribute to it. These conditions surface in most people quite spontaneously."

At the request of the Commission, the claimant was examined by (Dr. D) on April 2, 1993, pursuant to a medical examination order issued under Article 8308-4.16 [now Section 408.004]. Dr. D wrote an extensive and detailed report dated April 2, 1993, in which he

reviewed the claimant's medical history, reports, diagnostic tests, and treatment, and set forth his findings on physical and neurological examinations. Dr. D stated that "I do not think that there is any causal relationship of his injury to his development of cardiac arrhythmia." Dr. D further stated that "[c]ardiac arrhythmias can come on spontaneously for an unknown reason and it appears that this was the case with this patient." Dr. D added "I believe that there is no causal relationship between this patient's cardiac arrhythmia and his work-related injury." In regard to the claimant's complaints of low back pain, Dr. D diagnosed degenerative disc disease of the lumbosacral spine with disc herniation at the L4-5 level and with disc bulging at the L1-2, L2-3, and L3-4 levels. Dr. D stated that the claimant's herniated disc was most likely due to a natural progression of degenerative disc disease which was probably present prior to his work-related injury. Dr. D stated that he believes that "there is no causal relationship in regard to the patient's work-related injury and his low back pain."

The hearing officer determined that the compensable injury sustained by the claimant on (date of injury), does not extend to his heart or low back. In the initial appeal which was timely filed, the claimant states only that he would "like to appeal my contested case hearing of Oct. 18, 1993."

A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant has the burden to prove that he was injured in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). It has been held that the immediate effects of the original injury are not solely determinative of the nature and extent of the compensable injury and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the claimant are to be considered. Texas Employers Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ). However, the extent of the injury, including injury resulting from medical treatment for the original injury, is ordinarily a question of fact for the trier of fact, who, in the instant case, was the hearing officer. See e.g. Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975); and Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992. The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the evidence, it is the duty of the finder of fact to consider these conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio, 1964, writ ref'd n.r.e.). The hearing officer also resolves conflicts in the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In the instant case, the evidence sharply conflicted on the question of whether the claimant's heart and low back problems were causally connected to his work-related accident and injury of (date of injury). Apparently, the hearing officer gave more weight to the opinions of Drs. M and D than he gave to the opinions of Drs. E and Q. This he was

entitled to do as part of his responsibility to judge the weight to be given to the evidence and to resolve conflicts in the evidence. Having reviewed the record, we conclude that the hearing officer's decision is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

The decision of the hearing officer is affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge