APPEAL NO. 931116

This appeal arises under 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*.). On November 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not have disability from January 7, 1992, to the date of the hearing based on his compensable injury of (date of injury). Claimant asserts that he received medical care before (date), when he had a car accident, that a doctor selected by both parties to evaluate him did not find that the car accident caused his disability, and that he was unable to work per other medical evidence. Respondent (carrier) replies that the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked for (employer) as a fabricator. He had a prior back injury in 1983 for which he had surgery in 1988 and 1989. He stated that he was off work from that surgery until sometime in 1990. On (date of injury), claimant said he moved in an awkward position causing rigidity in his back. He saw a doctor he had seen before, (Dr. W) in (date), and had an MRI done on June 27, 1991. That study reported no herniated disc, and Dr. W in a letter to claimant on July 2, 1991, stated the test was "principally within normal limits." He said there were some disc "abnormalities" at the lower levels where surgery had been performed; he did not report disc herniation and saw no evidence of nerve root compression; he saw no indication for surgery in referring to claimant's report of pain. There is no indication that claimant saw any doctor thereafter until early November 1991 after his motor vehicle accident on (date), from which he reported injury to his low back. Claimant also agreed that after the (date of injury), accident he worked until January 1992 with only an occasional day away from the job.

After the car wreck, claimant saw (Dr. Wi) complaining of the effects of that accident. He did not tell Dr. Wi of the (date) injury, but did tell him of his past surgery. He did not tell Dr. Wi that he started seeing (Dr. S) in this period for his complaints of the (date) injury.

Claimant saw Dr. S on November 20, 1991, giving him a history of the (date) accident. He told him of the past surgery, but did not mention the recent car accident. Dr. S ordered a CT scan which showed torn discs at the L4-5 and L5-S1 levels. Surgery was performed in March 1992 by Dr. S. On October 16, 1992, Dr. S wrote:

> It wasn't until just recently that [claimant] indicated to me that he had been involved in a motor vehicle accident. At the time that he told me of the accident, he also asked if I could possibly write a statement saying how much this car accident contributed to his problems, which I have refused to do, as he was not at all honest with me about this. I have no way of knowing how much if any this accident contributed to his problem because I was not made aware of it until just recently.

Claimant reached a settlement with another carrier in regard to the auto accident of (date).

Claimant provided the hearing officer with a letter he wrote to the carrier on October 29, 1991, which states it was "in regards to me seeing " (Dr. M). Claimant argues that this letter shows that he did have medical care prior to November 1991.

At the benefit review conference of September 16, 1993, claimant and carrier agreed that (Dr. T) would review the records to "give an opinion of the resulting surgery and disability." There was no agreement that what Dr. T said would be followed by the parties. Dr. T reported:

> It should be noted that by [claimant's] self report, he states that he has always had problems with his back ever since his first surgery. When asked specially how he was with regards to his back at the time of my exam, he states that there was "nothing new." I would therefore have to assume that the automobile accident in which he was involved had very little to do with regards to his ongoing complaints and that it is my best medical opinion that his current disability is do [sic] to his workman compensation injury.

On January 20, 1992, prior to the surgery he performed in March 1992, Dr. S did state that claimant was "disabled from working since January 7, 1992, and will remain disabled for an indefinite amount of time." In Texas Workers' Compensation Commission Appeal No. 92316, decided August 21, 1992, it was stated that medical evidence could be interpreted as providing no support for a claimant when an MRI showed no injury after the alleged injury but before a subsequent trauma, the doctor did not consider the later trauma because it was not disclosed to him, and another doctor said that his conclusions would be "useless" when based on lies in the history he was given. *See also* Texas Workers' Compensation Commission Appeal No. 91108, decided January 16, 1992.

In Texas Workers' Compensation Commission Appeal No. 92690, decided February 8, 1993, the Appeals Panel affirmed a hearing officer who found that the great weight of other medical evidence was contrary to the opinion of the designated doctor. In that case the claimant told the designated doctor that records indicating he had been in a modest car accident after the alleged injury were not his. The hearing officer found that the designated doctor had not considered an important factor in his analysis (the subsequent car accident) and awarded zero percent impairment based on other medical evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could consider that certain medical evidence should receive very little weight when based on incomplete or erroneous information in the history given to the physicians involved. He could give significant weight to the MRI obtained shortly after the job injury in (date), which was before the car accident in October 1991. He could compare that report to the CT scan in December 1991 which showed torn discs. He could consider that claimant produced no medical records of treatment after Dr. W wrote to him on July 2,

1991, with the results of the MRI done on June 27, 1991, until he saw a doctor for the car accident in November 1991. Notwithstanding claimant's letter of October 29, 1991, the hearing officer could infer from the evidence that claimant had no medical care from June 27th to early November 1991. The hearing officer could also consider that claimant did not miss work because of the (date) injury until after he was in the car accident. The hearing officer as fact finder is not required to accept the testimony of an interested witness. *See* Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The evidence sufficiently supports the hearing officer's finding of fact that the compensable injury of (date of injury), did not cause disability after January 7, 1992.

The Appeals Panel will not reverse the decision of the hearing officer when based on factual determinations unless it is against the great weight and preponderance of the evidence. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). In this case the decision and order of the hearing officer are not against the great weight and preponderance of the evidence. Affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge