APPEAL NO. 93208

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). A contested case hearing was convened in (city), Texas, by (hearing officer), hearing officer, on September 17, 1992, and was continued until February 11, 1993, when it was concluded. The single disputed issue unresolved from the Benefit Review Conference (BRC) was whether respondent's (claimant) inability to work and need for medical treatment after January 31, 1992, resulted from her (date of injury) compensable injury or were solely caused by a back injury sustained in an automobile accident on September 3, 1991. The parties stipulated that claimant suffered a compensable injury on (date of injury), as an employee of (employer). The hearing officer concluded that claimant established by a preponderance of the evidence that her (date of injury) back injury was a producing cause of her disability from February 1, 1992 to the date of the hearing officer's decision, and decided that claimant was entitled to medical benefits effective (date of injury), and to unpaid temporary income benefits (TIBS) accruing from February 1, 1992, until such time as she no longer has disability under the 1989 Act or has reached maximum medical improvement (MMI). Appellant (carrier) challenges the sufficiency of the evidence to support the hearing officer's legal conclusion and certain of its underlying factual findings. Claimant's response urges our affirmance.

DECISION

Finding the evidence sufficient to support the challenged conclusion and findings, we affirm.

Claimant, the sole witness, testified that she had been a registered nurse for 30 years and had worked for employer for ten years in the cardiac care unit (CCU). Her work required her to lift and transport patients, and to move around rapidly in response to emergencies. In March 1986, claimant suffered a back injury involving a fractured vertebra when she fell off a chair at work. She said she recovered from that injury, returned to work at her regular duties two months later and eventually settled that case, although she had intermittent chiropractic treatment for back pain continuously thereafter. On (date of injury), claimant tripped over a chair at work and fell fracturing her coccyx and injuring her lower back. The parties stipulated that claimant suffered "a compensable injury" on (date of injury). Claimant's treating doctor for her August 16th injuries was (Dr. GJ), an internist and her family doctor. She said Dr. GJ referred her to (Dr. MF), an orthopedist, whom she saw on August 20th. He released her to return to work effective August 26th but she was still having pain. On the morning of September 3, 1991, claimant was again seen by Dr. MF who advised her he would abide by Dr. GJ's decision as to when she could return to work. Claimant had an appointment with Dr. GJ for later that day and expected that he would advise her she could return to work. However, she said that she was still having a lot of back pain from her August 16th injuries, as well as some difficulty walking, and that she did not expect to return to work at that time. On her way home from Dr. MF's office, she was involved in an auto accident in which her car was stru ck from the rear. Claimant said

that she received minor injuries in that accident including a cervical strain which required her to wear a neck collar for some time. She said her pain from her lower back injuries of August 16th were aggravated by that accident but that she did not sustain a back injury therefrom. Claimant was treated by Dr. GJ for her auto accident injuries for approximately one month, including physical therapy (PT), and said she fully recovered from the auto accident injuries, though she still had pain from her fractured coccyx and lower back injury of August 16th. She said she would not have settled her auto accident case with the other driver's insurer in January 1992 had she felt she still had medical problems from that accident.

Claimant returned to work at her regular duties on October 7, 1991, having been released for such by Dr. GJ. However, claimant said she continued to work but had a lot of back pain from her August 16th injuries, continued taking medications, was off work several times because of the pain, and at times required the assistance of her coworkers to perform her duties. She worked until January 30, 1992, when the pain from her August 16th lower back injury, which was getting worse, forced her to stop working and she has since been unable to return to her CCU nursing duties. She said she would be at work at the present time were it not for the August 16th injury, and that Dr. GJ later restricted her from working until October 5, 1992, and has not yet released her to return to her regular duties. Medical certificates from Dr. GJ dated in April, June, and July 1992, kept claimant off work and indicated she was unable to perform her duties from (date of injury) to October 5, 1992.

It was the carrier's position that while it was not trying to prove that the September 3rd auto accident resulted in injuries which were the sole cause of claimant's disability, that the evidence of the lingering effects of her March 1986 back injury, the evidence of her September 3rd accident, the evidence of a fall at home in December 1991, and the possibility that her left leg muscle weakness may be attributable to Parkinson's or Wilson's disease, all combined to offset claimant's evidence and to result in her having failed to prove by a preponderance of the evidence that her inability to return to her work, which the carrier did not appear to seriously dispute, resulted from her stipulated compensable injury of August 16th.

Dr. GJ's Initial Medical Report (TWCC-61) reporting claimant's visit of August 20, 1991, stated a diagnosis of a fracture coccyx and lumbar sprain. Claimant had earlier gone to an emergency room after her fall. Dr. MF's report of claimant's August 20th visit indicates he reviewed her x-rays, verified she had a transverse fracture through the coccyx, and took her off work until August 26th. The carrier emphasized the failure of Dr. MF's report to mention any lower back injury other than the fractured coccyx and contended that any additional back injury, as well as any leg injury, resulted from the September 3rd auto accident. In Dr. GJ's report of September 3rd, he stated that shortly before seeing him that day claimant was involved in an auto accident, that her "old injuries" from August 16th

included both a fracture of the coccyx and an acute lumbar sprain, that those injuries were "aggravated" by the September 3rd auto accident, and that the latter accident resulted in certain new injuries which included acute cervical sprain, acute thoracic sprain, posttraumatic headaches, and multiple contusions. He took her off work indefinitely and initiated an intensive course of daily PT.

Dr. GJ's report of September 24th recounted that claimant's March 2, 1986 injury at work resulted from a fall to the floor when her chair slipped out from underneath her. She sustained a fracture of the third lumbar spinal process for which she was treated conservatively, and she ultimately developed a chronic lumbosacral sprain syndrome. She had a repeat neurological evaluation in February 1991 by (Dr. WF) because she was having increasing pain in her lower back with radiation into her left leg as well as some weakness in that leg and difficulty in walking. An EMG revealed increased irritability in the left sacral paraspinal muscles consistent with left sacral nerve irritation. Dr. WF treated claimant conservatively and referred her for chiropractic treatment by (Dr. JF) who last saw claimant on July 2, 1991, when she still had left leg stiffness. Dr. GJ's September 24th report also stated that when claimant fell on August 16th, her buttocks and lower back struck the floor and she also injured her legs during that fall. Dr. GJ stated he had disagreed with Dr. MF's releasing claimant to return to work as of August 26th and instead advised her not to begin work before September 3rd and to avoid bending, lifting, twisting, prolonged standing, and squatting. He said she was to have been evaluated on September 3rd to determine whether she could then return to work full time without restrictions. Dr. GJ's report of January 8, 1992, referred to his September 24th report and stated that all of claimant's injuries and diagnoses mentioned in that report are directly related to her falls at work, that the September 3rd auto accident aggravated her prior injuries, that she recovered from her cervical strain, and that her chronic lumbar sprain, aggravated by the auto accident, still remains. Dr. GJ said he felt it to be "error for the carrier to state that all of her present symptoms are directly related to the automobile accident."

The carrier took the position that claimant's only injury on August 16th was the fractured coccyx, that any additional back injury and leg injury resulted from the September 3rd auto accident or existed prior to her August 16th injury. Carrier argued that Dr. GJ, who had been claimant's family doctor for several years, ultimately became "an advocate" for claimant and thus the credibility of his reports should be discounted.

The carrier introduced voluminous medical records but indicated it was chiefly relying on reports from Dr. WF to Dr. GJ, dated February 12 and July 8, 1991, and reports from (Dr. KK) to Dr. GJ, dated May 5 and June 15, 1992. Dr. WF's reports indicated that in February 1991, claimant presented with complaints of increasing back pain radiating to her left leg, along with left leg weakness and stiffness, and difficulty in walking, that her sensory examinations were normal, as was an MRI of her cervical and thoracic spine. He was to obtain an MRI of her lumbar spine as well as EMG and nerve conduction studies. Dr. WF

believed claimant had chronic cervical strain and doubted any upper motor neuron abnormality. Dr. KK's first report stated that an EMG revealed muscular weakness, that a Parkinson's disease was suspected, and that a muscle biopsy was recommended. The second report advised that claimant was having problems with stiffness and wasting of her left leg since 1990, that a subsequent muscle biopsy was abnormal, and that his impression was either a degenerative type disorder involving spinal cord and motor nerves or Wilson's disease with a differential of Parkinson's disease to be considered. In a report of December 23, 1991, (DR. GG), a physical medicine and rehabilitation specialist who had previously examined claimant on September 30, 1991, upon referral from Dr. GJ, stated that she fell on December 2, 1991 and suffered extensive facial lacerations, that she has a marked loss of left leg muscle strength and evidence of L5-S1 diminished power, and that he recommended a strengthening program. In a report dated September 22, 1992, (Dr. LR), a physical medicine and rehabilitation specialist, indicated that claimant began to experience falls in December 1991 with subsequent frequency of up to once or twice a week as a result of decreased coordination of her left leg, and was to commence a program to strengthen her left leg which included PT, gait training, and lumbar stabilization.

With no objection registered by the parties, the hearing officer, after taking the bulk of the medical evidence on September 17, 1992, decided to obtain an independent medical examination pursuant to Article 8308-4.16 to determine whether claimant was able to return to work and, if not, whether her August 16th injury caused or contributed to her present inability to return to work. When the hearing resumed on February 11, 1993, the hearing officer introduced the report of (Dr. DE), an orthopedic surgeon, dated October 30, 1992, and his deposition on written questions, taken by carrier on December 30, 1992. Dr. DE's report summarized claimant's extensive medical history and testing and stated his impression that she has reached MMI and has chronic lumbar pain with intermittent radicular pain in the left leg. He could detect no neurologic cause of her left leg weakness. Dr. DE felt claimant could return to work with restrictions on lifting, stooping, and squatting, but also said she may not be able to return to her previous work in the CCU because of chronic back and leg pain. In his deposition, Dr. DE said claimant's August 16th injury did contribute to her inability to return to work between January 1992 and October 30, 1992. He disagreed with a question which stated that claimant first claimed her neck and left leg were injured in her August 16th fall when she visited Dr. DE on October 30, 1992. Dr. DE conceded that any relevant inaccuracies in the history provided by claimant could alter or change his opinion and said he reviewed certain medical records including those of Drs. GJ, WF, MF, GG, and KK, as well as the EMG and nerve conduction studies of February 2, 1991. To a cross-question from claimant, Dr. DR responded that it was his opinion that the injuries claimant sustained in her September 3rd auto accident were not the sole cause of her present disabilities.

Carrier challenges portions of the hearing officer's factual findings including findings that claimant's auto accident caused "slight" (vis-a-vis "significant") aggravation of her

lumbar sprain, that claimant "fully recovered" from the injuries she sustained in the auto accident, that claimant has been unable to continue working since January 31, 1992, because of back pain with radiculopathy to her left leg and weakness in her left leg, and that claimant's August 16th injury contributed to her present medical condition and to her inability to perform full duty work from February 1, 1992 to the date of the hearing officer's decision. The hearing officer's conclusion that claimant established by a preponderance of the evidence that her August 16th injury was a producing cause of her disability from February 1, 1992, to the date of the decision was also challenged.

Article 8308-1.03(16) defines "disability" as the "inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury." In this case, the parties stipulated that claimant sustained a compensable injury on (date of injury). However, they differed as to whether claimant's disability after January 30, 1992, resulted from her compensable injury of August 16th, as she claimed, or, as the carrier argued, from the auto accident of September 3rd, or her prior injury of March 2, 1986, which had been settled, or from some neurological disorder or from a combination of such other injuries. Given the statements in the reports of Dr. GJ, and in the report and deposition of Dr. DE, as well as the claimant's testimony, the hearing officer's findings are sufficiently supported in the evidence of record. None of the medical evidence directly stated that the low back and left leg problems claimant was experiencing after January 30, 1992, were not a result of her August 16th injury or were caused by the later auto accident. To the extent that claimant's compensable back and leg injuries of August 16th may have aggravated prior back and leg injuries of March 2, 1986, such aggravation could itself be a compensable injury as we have many times held. *See e.g.* Texas Workers' Compensation Commission Appeal No. 92515, decided November 5, 1992. We agree with the hearing officer that claimant met her burden of proving by a preponderance of the evidence that she had disability from her stipulated compensable injury.

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ.

App.-Amarillo, no writ). We do not substitute our judgment for that of the hearing officer where, as here, the challenged findings are supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged findings and conclusion of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Thomas A. Knapp
Appeals Judge