APPEAL NO. 93573

At a contested case hearing held in (city), Texas, which convened on May 19, 1993, reconvened on May 25th, and closed on May 28, 1993, the hearing officer, (hearing officer), considered the two disputed issues, namely, whether the appellant (claimant) sustained a back injury in the course and scope of his employment on (date of injury), and to what extent claimant has disability under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.03 (16) (Vernon Supp. 1993) (1989 Act). The hearing officer concluded that claimant proved he sustained a compensable injury to his L5-S1 level disc and that he had disability commencing September 2, 1992. In his request for review, claimant challenges three factual findings concerning the manner in which he fell at work while carrying a heavy roll of carpet with coworkers, and to the effect that his (date of injury), accident at work did not cause injury to his cervical spine and to his L2-L3 level disc but rather that his problems in those spinal areas were the result of the aging process and are ordinary diseases of life. Claimant contends that the manner in which he fell was different from that found by the hearing officer and that his spinal discs at the C3-4 and L2-3 levels were injured in the accident at work. The respondent (carrier) urges the sufficiency of the evidence to support the challenged factual findings.

DECISION

Finding the evidence sufficient to support the challenged factual findings, the decision is affirmed.

The three challenged factual findings are as follows:

**FINDINGS OF FACT**

7.The Claimant tripped over another roll of carpeting before the roll that he and the other employees were carrying was lowered to the floor.

8.When the Claimant tripped over the carpet, the other employees could not support the carpet at his end and the carpet dropped to the floor, pinning the Claimant's foot.

10.The impact of the carpet to the Claimant's foot did not cause any injury to the Claimant's cervical spine or to the disc at L2-L3; any problems experienced by the Claimant in those areas are the result of the aging process and are ordinary diseases of life.

Not challenged by claimant was Finding of Fact No. 9 that "[t]he impact of the carpet caused the Claimant to sustain an annular tear to the L5-S1 disc in his back." Based on these findings, the hearing officer concluded that claimant had proved by a preponderance of the evidence that he sustained a compensable injury to the L5-S1 disc.

The hearing officer was presented with various versions of the precise details of how claimant fell at work on (date of injury). It was not disputed that claimant and several of his coworkers (testified to, variously, as from six to ten employees) at a building interior construction site were asked to move several rolls of carpet from a truck into the building and into a back room. They had already carried one or two rolls to the back room and were in that room with the second when the accident occurred.

One of the coworkers, (Mr. G), testified that claimant tripped over some insulation on the floor and that the weight of the carpet dragged claimant down and he ended up with about four or five feet of the carpet roll on his right hip. Claimant, who had been installing ceiling tile, said the men carried the approximately 1000 pound roll of carpet on their shoulders into the room. He said he was supporting it with his right shoulder, that when they got the roll into the room, the other men had the roll on their left shoulders and were preparing to throw it to their left, and that as he tried to maneuver around, the carpet was tossed to the left and its weight dragged him down to the floor as he twisted around. He said he fell landing on his side, but that the weight of the carpet was not on him. Rather, one of his shoe tips was pinned under the carpet. Claimant's brother, (Mr. RM), testified he thought the weight of the carpet caused claimant to fall, and that the carpet was against claimant's right hip when he was on the floor.

(Mr. MM), the superintendent, testified that he had been in the truck pushing the roll out and onto the shoulders of the employees, that the men were on both sides of the roll bearing its weight on their respective inside shoulders, and that he was at the rear end of the roll holding it up as they proceeded into the room. He said that as they entered the back room and approached the drop area, claimant stumbled backwards against a roll already on the floor, that as he did so everyone else got a little off balance, and that the carpet roll dropped and hit one of the rolls on the floor. He said claimant ended up on his back straddling two of the rolls as if he were sitting in a recliner chair, that he did not have the weight of the carpet on him or it would have taken all of them to remove it, that he got right up, laughed it off, never indicated any injury for the next several weeks he worked before quitting his job on July 17th over a mileage reimbursement dispute.

The hearing officer is the sole judge of the weight and credibility to be given the evidence. Article 8308-6.34(e). Whether and how claimant may have sustained a compensable injury were fact questions for the hearing officer as the trier of fact to resolve. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J, 508 S.W. 2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is privileged to believe all or part or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The hearing officer is not bound to accept the testimony of the claimant at face value. Garza, *supra*. As an interested party, the claimant's testimony only raises an issue of fact for determination by the trier of fact. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer was free to accept Mr. MM's version of claimant's fall. Claimant himself said the

weight of the carpet was not upon him and that only one of his shoe tips was pinned down by the roll. Although the parties never articulated why the precise manner in which claimant fell mattered so much, we can surmise that claimant's theory was that if he was dragged down by the weight of the carpet, rather than simply stumbling and falling upon another roll without the weight of the carpet dragging him down, he could be viewed as less likely to have sustained his claimed injury. Findings of Fact 7 and 8 are sufficiently supported by the evidence.

Finding of Fact No. 10 is more problematical but the evidence is, we believe, sufficient to support it. As for the finding that claimant did not sustain a compensable cervical injury, the disputed issue below was whether claimant sustained "a back injury" and claimant did not appear to be asserting at the hearing that he was asserting a cervical spine injury as well. Indeed, all his diagnostic tests from July 17, 1992, when claimant first sought medical treatment, pertained to his lumbar spine, and it was not until he was examined by (Dr. G), a neurologist, on February 24, 1993, that a medical record mentions claimant's having a cervical spine problem. Dr. G said in his February 24th report that he felt claimant "has cervical and lumbar injuries." An MRI performed for Dr. G on May 17, 1993, indicated normal levels at C1-2 and C2-3, a small focal disc protrusion at C3-4, cervical spondylosis without focal disc herniation at C4-5, and minimal cervical spondylosis at C5-6, C6-7, and C7-T1. Dr. G's records do not relate cervical disc abnormalities to claimant's fall on (date of injury).

Claimant testified he first sought medical treatment after his (date of injury), fall on the evening of July 17th, the day he quit his job. The medical records of that visit indicate that claimant, then 37 years of age, complained of lower back pain, leg weakness, and tingling and numbness at the back of his legs. He was seen and treated by (Dr. MM) who diagnosed acute lumbosacral spasm of the lower back, no fracture, and rule out herniation at the L4-5 level. A CT scan of July 21st performed from L3 to the lumbosacral junction showed an unremarkable lumbar spine other than for underdevelopment of the posterior elements on the right side at L5-S1.

Claimant said he began treating with (Dr. D), an orthopedic surgeon, in September 1992. An MRI of his lumbar spine performed for Dr. D on September 15th showed no abnormalities at the L1-2, L3-4, and L4-5 levels; a narrowing of the disc space, a small broad based posterior protrusion of the disc, and effacement of the anterior aspect of the thecal sac at L2-3; and a narrowing of the disc space, a small broad based posterior bulge of the disc, and no effacement of the thecal sac at L5-S1. Dr. D's September 23rd report referred to the MRI and said it revealed a narrowing and degeneration of the discs at L2-3 and L5-S1, and that it looked like a small disc herniation at L2-3 and a moderate bulge at L5-S1. On October 12th, claimant was seen by (Dr. GV), a neurologist, upon referral by Dr. D, who reviewed claimant's x-rays, CT scan, and MRI. Dr. GV saw degenerative disc changes at L5-S1 and at L2-3 with moderate central bulging but no obvious lateral root compression. His impression was degenerative disc L5-S1 with central bulge and possible early root compression findings.

On November 16, 1992, a discogram and CT lumbar spine scan were performed for Dr. D. The CT scan findings were consistent with advanced degenerative disease of the L2-3 disc without evidence of disc herniation, and degenerative changes involving the L5-S1 disc together with additional findings consistent with a complete annular tear in this region. The discogram findings showed degenerative disc disease at L2-3, and at L5-S1 and the findings were consistent with annular tear and raised the possibility of disc herniation. Dr. D's report of January 4, 1993, stated that Dr. GV felt claimant had a herniated disc at L5-S1 and also a degenerative disc at L2-3, and that he advised surgery for the L5-S1 disc.

We view the medical evidence as sufficiently supportive of Finding of Fact No. 10 respecting the L2-3 disc and the cervical spine not being injured by the incident. However, we regard as surplusage and unnecessary to the findings, and do not mean to imply our approval of the hearing officer's going on to state that those spinal problems were the result of aging and ordinary disease of life. As the trier of fact, the hearing officer also judges the weight to be given the expert medical testimony and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Company v. Campos, 666 S.W. 2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Atkinson v. United States Fidelity Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd, n.r.e.); Highlands Underwriters Ins. Co. v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Corpus Christi 1973, no writ). The challenged findings 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 decisions of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge