APPEAL NO. 93632

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On June 25, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) incurred disability as a result of a compensable injury until (date), but that there was no disability from (date) to August 18, 1992. Claimant asserts that the determination of no disability after (date of injury), is not supported by sufficient evidence. Respondent (employer) replies that the hearing officer's decision is supported by sufficient evidence.

DECISION

We affirm.

The only issue at the hearing was whether claimant had disability from June 1, 1991, through August 18, 1992.

Section 410.204(a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

Claimant asserts on appeal that the evidence is not sufficient to support the finding that there was no disability from (date), to August 18, 1992. In addition, claimant states that the hearing officer's assertion, (found in that part of the decision labeled as "Discussion") that claimant's inability to return to work after (date of injury), was based on a noncompensable aggravation of the prior compensable injury, was speculative.

The Appeals Panel determines:

That the hearing officer's determination that claimant had disability until (date of injury), but did not have disability between (date), and August 18, 1992, was supported by sufficient evidence of record.

Claimant teaches school and on (date), she fell against a wall, catching herself with her right hand. She sought medical care for her hand and also noted pain in her back and foot at an emergency room. A cast was put on her foot. She saw (Dr. I) who took her off work for two weeks and then returned her to light duty on May 6, 1991. Her school principal wrote a letter on May 23, 1991, advising that the school does not allow personnel to work unless cleared for regular duty. Thereafter, on May 24, 1991, Dr. I signed a note releasing claimant to "full duties as of 5-24-91." Claimant testified that she asked for this note and picked it up on May 28, 1991. She testified that it was hard for her to teach because the stiffness of her hand interfered with writing and the foot cast also restricted her mobility.

Claimant's Exhibits Nos. 17 and 12 show that claimant began receiving physical therapy for her low back on June 6, 1991; prior to that time her treatment had been for her hand and foot. Her therapy notes show that her back was "much better" on July 16, 1991,

and that her right hand was improved over several sessions of therapy in early August, 1991. Dr. I in a letter dated July 19, 1991, stated that he saw claimant on June 27, 1991; he added, "[h]er hand was basically cured." In reference to her back, he said that a "TENS" unit was helping her back, and "[s]he has been taking her time getting better from this, but I think she will be ready for the school year without difficulty."

Dr. I also pointed out in a letter to claimant's lawyer dated May 26, 1993, that he had not taken claimant off work from June 1, 1991, until August 18, 1992. He also stated that claimant was doing well until (date of injury), when, while at home, she "bent over to tie her shoes." Dr. I had also noted, in Claimant's Exhibit No. 8, that claimant was being admitted to the hospital on (date of injury), that she had been injured on April 18th, and stated, "[a]t the present time she bent over the (sic) pick something up, and experienced severe low back pain."

Dr. I's reports indicate that on January 27, 1992, he referred claimant to (Dr. B) in regard to her hand. Dr. B on March 16, 1992, wrote to Dr. I that his impression was, "[p]ain right hand and upper extremity, etiology undetermined. Possible musculotendinitis with elements of reflex sympathetic dystrophy." He referred the claimant back to Dr. I.

Dr. I's letter to claimant's lawyer of May 26, 1993, in addition to addressing the release to work and incident of (date of injury), referred to a bone scan in November, 1991, that was normal. He added, "[b]ecause of continued complaints, I ordered an MRI of her lumbosacral spine, and an EMG and nerve conduction test." The MRI showed a bulging L3-4 disc. "The EMG of the upper extremity was normal." Dr. I then added:

> In summary, [claimant] had a fall in which she injured her foot, hand, and back. Her foot does not seem to be an ongoing problem. Her hand was something that she complained bitterly of for a long while, but there was never much to find from either the point of view of physical examination, or imaging studies, EMG or nerve conduction tests, etc.
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> As far as her low back in concerned, there was minor disc bulging found, but nothing of significance.

(The report of the MRI itself, dated December 10, 1991, states that the L3-4 level has a herniation.)

Claimant stated that she has pain that does not show up on tests. She acknowledged that she did not have the kind of back pain prior to (date of injury), that she had at that time. In answer to the hearing officer, she stated that she could have returned

to work August 18, 1992, except for family sickness that required her time.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165 of the 1989 Act. The Appeals Panel has stated that an unconditional medical release to return to work does not automatically end disability. *See* Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991. The hearing officer may consider all the medical evidence in regard to disability and also evidence provided by claimant and other lay witnesses. *See* Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992, and Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In considering all the medical evidence, the hearing officer was not restricted to a consideration only of work release statements or work restricting statements; the hearing officer could consider, for example, all the opinions of the physician(s) relative to diagnoses, treatment, test results, the sequential nature of any of the above, the rate of progress of the patient, and the questions raised by the physician about the rate of progress of the patient's recovery. The hearing officer could also, in matters of disability, consider whether the claimant's pain itself limited the ability of the claimant to work. *See* Houston Gen. Ins. Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.), which stated, "pain was the immediate cause of appellee's disability to work."

Just as the hearing officer does not have to conclude that an unconditional medical release to return to work ends disability, that fact finder does not have to conclude that testimony as to pain requires a finding that disability exists at a particular time. The hearing officer, as fact finder, weighs these sometimes contradictory opinions and conflicting information in order to determine that disability exists or does not.

In Texas Workers' Compensation Commission Appeal No. 92322, decided August 14, 1992, a determination of no disability was affirmed in a case involving a slip and fall on the job. The claimant in that case was able to work after the fall although she stated her back became more painful. Just over two months after the compensable fall, claimant felt a "pop" in her back while at home washing dishes. In that case her doctor stated that he thought her herniated disc resulted from the fall at work. Nevertheless, the Appeals Panel affirmed the hearing officer's decision that claimant had not proven disability existed.

It was the responsibility of the hearing officer to consider the release to return to work and the medical evidence of claimant's condition along with the testimony of claimant as to her back incident at home on (date of injury), in the context of an initiating compensable injury of (date), followed by continuous medical treatment and the claimant's testimony of pain and limitations on her ability to work. The hearing officer discharged that duty and the evidence of record is sufficient to support her determination in regard to when disability ended. While the hearing officer did not have to observe a reason why claimant had a problem after the disability ended, she stated in "Discussion" that the incident at home on

August 13th caused her back problems thereafter. The claimant labels that as "speculation," possibly because no medical evidence comments as to causation thereafter. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied) indicates that medical evidence is not necessary where, "[t]he lay proof of the sequence of events, his objective symptoms of pain and discomfort fortified by evidence of timely treatment, produced a logical traceable connection between accident and result." The testimony of the claimant as to the sequence of events of August 13th was reflected by medical records of her admission to a hospital that day and provided sufficient evidence to support the hearing officer's statement as to causation after the period of disability ended. (The Appeals Panel notes that the hearing officer also used the word "incapacity" in her "Discussion;" the 1989 Act does not contain that term.)

Finding that the decision and order of the hearing officer is not against the great weight and preponderance of the evidence, we affirm. In re King's Estate, 150 Tex 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge