APPEAL NO. 93919

This appeal is brought pursuant to 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.*). A contested case hearing was held on September 9, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The only issue at the hearing that remains on appeal is whether the appellant (claimant) injured his hip and back in the course and scope of his employment as a consequence of his previous compensable knee injury. The hearing officer concluded that the claimant did not injure his hip and back in the course and scope of his employment and that these "complaints are not a consequence of the injury to his knee." Claimant appeals stating that "I'm still not satisfied because I'm still hurt from my left knee and my waist." Respondent (carrier) argues that there is sufficient evidence in the record to support the decision of the hearing officer and urges affirmance.

DECISION

Finding sufficient evidence to support the hearing officer's decision and that it is not erroneous as a matter of law, the decision is affirmed.

This case deals with the issue of later injuries following on or resulting from an undisputed compensable injury and has been addressed in numerous opinions of the Appeals Panel. *See*, e.g., Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993; Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; and Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993.

The claimant worked as a cement finisher. On (date of injury), he injured his right knee when he fell while carrying a five gallon can of water. This injury was timely reported to the employer and the claimant was seen for the first time on February 28, 1991, by his treating doctor, (Dr. O), an orthopedic surgeon. Dr. O diagnosed a possible torn meniscus of the left knee. Neither the carrier nor the employer contested compensability of this injury. On March 22, 1991, arthroscopic surgery involving a partial medial meniscectomy was performed by Dr. O. In follow-up office visits with Dr. O through August 5, 1991, the claimant continued to complain of knee pain and limited range of motion. Dr. O's progress notes, however, make no mention of complaints of back or hip pain. Dr. O in a Report of Medical Evaluation (TWCC-69) received by the Commission on August 13, 1991, determined that the claimant reached maximum medical improvement (MMI) on July 29, 1991 with a four percent whole body impairment rating.

Apparently dissatisfied with Dr. O, the claimant next sought treatment from (Dr. D), an orthopedic surgeon. In an examination of the claimant on August 12, 1991, Dr. D found possible chondromalacia of the patella and marked atrophy of the quadriceps on the left side. Dr. D reports no other complaints of back or hip pain or injury. Because of continuing problems of pain and swelling in the knee, Dr. D. performed a second arthroscopic surgery on September 29, 1991. The claimant still continued to complain of knee pain through January 1992. No mention is made by Dr. D in various medical reports of any complaints

about back or hip pain. In an undated TWCC-69, Dr. D determined that the claimant reached MMI on March 2, 1992, with an eight percent impairment rating attributable to the right lower limb. At Dr. D's request, an MRI of the claimant's knee was performed on June 16, 1992, as a result of his continuing complaints of knee pain. The MRI disclosed another probable tear in the medial meniscus and possible degeneration or partial resection, or both, of the lateral meniscus. On July 28, 1992, Dr. D performed the third arthroscopic surgery on the claimant's knee. In a report of September 10, 1992, Dr. D states:

(Claimant) is walking in a different way, so he is also having some problems in the right hip. I told him that this is probably due to the muscles and will go away in the course of time.

A separate examination of the claimant by a (Dr. H), on a referral from Dr. D, disclosed "internal derangement of the left knee." Although Dr. H noticed that the claimant was limping, his examination of the abdomen was within normal limits and "the lower back showed a full range of motion with no pain or tenderness."

At Dr. D's request, an MRI of the claimant's lumbar spine and left knee was done on October 20, 1992. The results as to the spine showed mild stenosis at the L4-5 and L5-S1 levels, with mild bulging. In a medical report of November 2, 1992, Dr. D, in a discussion of the claimant's back problem says:

The back is not too bad. It looks more like a little bit of muscle spasm rather than anything else. I saw the lumbar spine which did not reveal any herniation of the disk. There seemed to be a mild spinal stenosis by the radiologist, but I do not think it is anything bad enough for him to have a myelogram or a diskogram to be done, but if he continues to have problems he probably may have to do that later on.

Dr. D provided a new TWCC-69, which was received by the Commission on November 12, 1992, in which he gives claimant a MMI date of November 9, 1992, with a whole body impairment rating of eight percent for the "lower limb." No rating was given for the spine or hip.[1] Later reports and written statements of the claimant's medical condition by Dr. D in January 1993 make no mention of back or hip pain.

Dr. D referred the claimant to (Dr. B), an orthopedic surgeon, in January 1993 for a second opinion on a possible fourth surgery to the left knee. As a result of a March 17, 1993, examination, Dr. B diagnosed an "anatalgic (sic) gate" and stated that the claimant "now . . . is claiming pain to the right hip that radiates down along the entire left lower extremity."

In office visits with Dr. D on March 25, 1993; April 1, 1993; April 22, 1993; and May

[1]Dr. D later reconsidered this evaluation and gave a 15% impairment rating for the lower limb and an MMI date of November 9, 1992, based on the second surgery.

13, 1993, the claimant complained of back problems and Dr. D urged the claimant to "clear" the back problem up before he had knee surgery a fourth time.

At the hearing, the claimant testified through an interpreter that he never had back problems before the accident on (date of injury). He first noticed the back pain after his first knee surgery on March 22, 1991. Claimant testified that he told Dr. O about back and "side" pain two weeks after the surgery when the stitches were removed. Dr. O reportedly told him not to worry, that the pain would go away. He also told Dr. D about his back pain and wanted to find out why he had the pain. Dr. D ordered the MRI in October of 1992 but never provided any treatment for the claimant's back and hip because the insurance would not pay for it. The claimant testified that Dr. D told him at an unspecified time that his back and hip problems "could be" and "probably were" related to his knee and that these problems would probably go away with time.

(HD), the employer, testified that the claimant only complained about an injury to his knee and never about back or hip problems.

The relevant determinations of the hearing officer are:

FINDINGS OF FACT

4. Claimant complained of a knee injury occurring on (date of injury). He did not mention or complain of an injury to his hip or back until late in 1992.

5. There is no medical evidence that a hip or back injury, if it exists, was the direct result of a work related injury.

6. There is no evidence which constitutes a medical probability that the Claimant's back and hip complaints are an indirect result of or consequence of the knee injury.

CONCLUSIONS OF LAW

2. Claimant did not injure his hip or back in the course and scope of his employment . . .

3. Claimant's hip and back complaints are not a consequence of the injury to his knee.

The Appeals Panel on numerous occasions has quoted approvingly the language of Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, aff'd per curiam, 432 S.W.2d 515 (Tex. 1968) that:

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which

render the employee incapable of work.

See e.g., Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993; Appeal No. 93672, *supra*; Appeal No. 93414, *supra*, in which the Appeals Panel affirmed the decision of a hearing officer which found that a knee injury caused a subsequent back injury because the knee forced the claimant to alter his gait; and Texas Workers' Compensation Commission Appeal No. 92538, decided September 1, 1992.

The claimant has the burden to prove by a preponderance of the evidence that a subsequent injury was caused by an earlier compensable injury and is thus sustained in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The causal connection, if any, between an earlier compensable injury and a subsequent injury is a question of fact. Appeal No. 93861, *supra*, and cases cited therein; Appeal No. 93672, *supra*. The hearing officer, as the fact finder, is the sole judge of the relevance and materiality of the evidence and of its weight and credibility and the inferences to be drawn therefrom. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In the case under appeal, it was the responsibility of the hearing officer to determine what weight to give to the evidence, including the claimant's testimony that he repeatedly complained to his doctors that his back hurt after the stitches from his first knee surgery were removed. The hearing officer considered this testimony and concluded that over one and one-half years had elapsed between the initial injury on (date of injury), and the first report of back and hip pain to a doctor. The hearing officer also considered the precise nature of the lumbar injury disclosed in the MRI of October 20, 1992 (stenosis) and the opinions of various doctors about a possible causal connection. From this he concluded that any back and hip injury suffered by the claimant was not the result, directly or indirectly, of the knee injury. Although in the present case there may have been some evidence that the original knee injury resulted in the claimant's antalgic gait which led to the back and hip condition, *see* Appeal No. 93672, *supra*, we do not conclude that the findings and decision of this hearing officer that there was no causal connection between the injuries are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust.

For this reason, we affirm the decision of the hearing officer.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge