APPEAL NO. 94305

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq*. On February 4, 1994, a contested case hearing was held (after an initial hearing had been continued) in (city), Texas, with (hearing officer) presiding. The issues were four: 1) whether the claimant's current condition at the time of the hearing was an effect that naturally resulted from injuries of (date of injury); 2) whether the claimant had reached maximum medical improvement (MMI) and if so, the date; 3) what the claimant's impairment rating was; and 4) whether the claimant sustained disability after July 1, 1992, which entitled her to temporary income benefits. It was undisputed that claimant had injured her left knee and her lumbar spine in a fall on (date of injury). (Although not really discussed, claimant had been off work since shortly after the injury and had thus reached at least "statutory" MMI according to the definition set forth in Section 401.011(30)(B) by the time of the second hearing.)

The hearing officer determined that claimant had not proved that her complained of conditions such as paralysis were related to her compensable injury or were a natural effect or result of it. The hearing officer further determined that claimant did not have disability (as defined by Section 401.011(16)) due to a compensable injury after July 1, 1992, that the report of the designated doctor was overcome by the great weight of contrary medical evidence, largely because the designated doctor was considering conditions not linked to the (date of injury) injury, and that claimant had reached MMI from her compensable injuries on July 1, 1992, with a zero percent impairment, as certified by a doctor for the carrier who had examined her and conducted objective tests.

The claimant has appealed, citing many findings that she believes to be against the great weight and preponderance of the evidence, and asking that the hearing officer's determination be reversed. The carrier responds that the appeal is untimely, and that the decision is sufficiently supported by the evidence.

DECISION

We affirm the hearing officer's decision and order.

We note that the appeal was timely filed in accordance with applicable rules of the Commission.

The claimant said that she fell on (date of injury), from a concrete step which broke out from under her, hitting her left side and knee, including her head. Claimant was employed at the time as a collector by (employer). Initially, she was treated by (Dr. U), with complaints involving her lower back and knee. He diagnosed lumbosacral strain and sprain of the left knee. It is noted that when he examined claimant on October 9, 1991, he found that her neck was supple, and that she had normal upper extremities, including neurological examination. He found nothing suggestive of herniated discs in the lumbar or cervical area. On November 21, 1991, (Dr. G) noted complaints of upper left extremity numbness and neck stiffness.

Claimant testified, and most of her medical records indicate, that she is classified as obese. Claimant said she experienced some numbness from the day of the fall, but by a year after the accident, the numbness began turning into paralysis, and that she used a walker and numerous activities had been curtailed. She maintained that she had pain throughout her spine. There are medical records identifying her onset of paralysis as September 1992. Claimant had not worked, however, beginning about four or five days after her injury.

The record contains many medical examinations, and claimant has been treated by a number of doctors. (Dr. O), an orthopedic surgeon, examined her knee and had x-rays taken, and adjudged her knee normal as of April 14, 1992. Objective tests have been performed; although an MRI was recommended by many doctors, claimant first had an MRI of her lumbar spine and knee pursuant to the orders of a carrier-requested doctor, (Dr. K). The knee was normal upon physical examination as well as in the MRI results. The lumbar spine was essentially normal with minimal spondylosis present at L5-S1. Dr. K certified that claimant reached MMI on July 1, 1992, with a zero percent impairment.

A designated doctor, (Dr. S), began investigating the cause of claimant's contended conditions in October 1992, and as of July 1993 did not certify MMI or impairment. MRIs were taken of the brain, the cervical spine, and the thoracic spine. A herniated disc was found at C5-6. However, as of November 1992, according to (Dr. V), a consulting doctor to the designated doctor, a myelogram and CT scan of the entire spine indicated that there was no compromise of the spinal column caused by this disc or anywhere else in the spine. EMG testing in July 1993 was suggestive of "mild" nerve root irritation at S1-2; the examination was largely normal.

To summarize a great volume of records, generally the only pronouncement of any cause of paralysis came from (Dr. KM), in June 1993, who opined that her paralysis was consistent with "transverse myelitis." Whether, or how, this evolved from her injury is not detailed or described. Dr. KM also stated that she could have a rare form of systemic vasculitis or auto-immune myelitis.

A number of medical records are indicative of chronic pain syndrome and observations of some emotional or psychiatric problems. The pain complaints noted in these records involve the lower back and extremities. (Dr. L), whom claimant identified as a treating physician, documented on September 16, 1992, that claimant had "inconsistent responses with repetitive testing and responses not in accordance with known anatomy." He diagnosed lumbar strain and left knee contusion, and although his report referenced an attached TWCC-69 report with a "final rating," it was not included in the record of this case. (Dr. B), a psychiatrist, found on December 21, 1993, that claimant had an adjustment disorder with mixed emotional feature, with elements of post-traumatic syndrome (but not full syndrome).

On February 3, 1993, Dr. S stated that an extended period of therapy to get claimant to a more functional level had been denied coverage; he stated that her condition was

unchanged. He stated that, after consulting with Dr. V, there would appear to be a large psychological component to her pain and that it could be a conversion type reaction related to her pain and subsequent stress. On July 16, 1993, Dr. S certified that claimant had not reached MMI. He noted that he had recommended a full in-depth therapy, including psychological counselling, to restore claimant to a functional level which had been denied.

In December 1993, (Dr. J), of the (Clinic), stated that his initial impression was chronic pain syndrome with possible evidence of degenerative disc disease or internal derangement of the knee. He appears to have discounted MRIs on the basis that claimant disputed they were hers. (It was established at the hearing, however, that they were.) Dr. J noted that he was aware of her normal myelogram and CT scan results.

Claimant confirmed that a "third party" lawsuit had been filed relating to her fall down the stairs.

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers' Insurance Ass'n v. Campos, 666 S.W.2d 286, 290 (Tex. App.- Houston [14th Dist.] 1984, no writ).

An "injury" includes damage or harm to the body and "a disease or infection naturally resulting from the damage or harm." The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). Chronology alone does not establish a causal link between a present condition and an earlier injury in all cases, especially when, as here, the symptoms manifest over a year after an injury. *See* Texas Workers' Compensation Commission Appeal No. 93532, decided August 13, 1993.

"Impairment" is defined in the 1989 Act as "any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). Further, impairment must be based upon "objective clinical or laboratory finding." Section 408.122(a). The hearing officer evidently determined that the objective clinical and laboratory evidence supported the zero percent impairment rating.

The hearing officer may have determined that the subsequent condition developed for reasons not having to do with the (date of injury), injury. She may have determined that the cervical disc herniation detected on an MRI well over a year after the injury represented a condition that developed later, especially in light of, for the most part, normal physical examinations of the neck and upper extremity immediately after the injury. In any case, we

cannot agree that her findings and conclusions relating to her determination not to accord presumptive weight to the report of the designated doctor are so against the great weight and preponderance of the evidence so as to be manifestly wrong or unjust. When a hearing officer of the Commission rejects the designated doctor's report that MMI has not been reached, the hearing officer may weigh and consider other evidence to determine the date of MMI and impairment rating. Although Dr. L referred to having performed a "final" rating (which implies he certified MMI and impairment), no report from him was before the hearing officer. This left Dr. K's certificate. It was based upon injuries that the hearing officer found to be the extent of the only compensable injuries in this case. We therefore affirm her decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge