

APPEAL NO. 980428

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 2, 1998, with a hearing officer. With respect to the issues before her, the hearing officer determined that appellant's (claimant) lumbar strain injury was not the result of the compensable (knee) injury of _____ (all dates are 1997), and that claimant had disability due to the knee injury from June 30th through July 13th.

Claimant appealed, contending that she had suffered a back injury at the same time that she sustained the compensable knee injury, citing various medical reports. Claimant also contends, in her appeal, that she has not been able to return to work as an "ICU RN" because of her compensable injuries. We will infer that claimant wants us to reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) urges affirmance.

DECISION

Affirmed.

Claimant was employed as an intensive care unit (ICU) nurse at (Hospital 1). It also appears that at the same time claimant was working for Hospital 1, she was also working part time at (Hospital 2). On (injury date), while working in Hospital 1, claimant fell on both her knees (apparently due to a wet floor). Claimant got up, finished her immediate task, and went to the Hospital 1 emergency room (ER) the same day. Claimant contends that she injured both knees and her back in the fall. (The medical evidence will be summarized below.) Claimant testified that she complained of back pain to the x-ray technician in the ER. Claimant began seeing (Dr. G) on June 30th. Dr. G released claimant back to full duty on July 13th. Subsequently, on July 15th, claimant sustained another injury lifting or pulling up a patient while working at Hospital 2. The July 15th injury is the subject of a different claim and is not directly at issue in this case. With the assistance of an attorney, claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated September 10th for this injury, alleging injuries to "both knees, both legs and body generally." At the same time, claimant also filed another TWCC-41 for the July 15th injury, alleging injury to the "right knee, back, and body generally."

The Hospital 1 ER records note "c/o pain to both knees/s," a history includes "[d]enies other [than knee] injuries" and x-rays of the knees were ordered, which only showed degenerative changes. Claimant apparently continued to be available for work until she saw Dr. G on June 30th. Dr. G's notes and records of that date only refer to pain in claimant's knees, more right than left. Dr. G took claimant off work for one week. A handwritten progress note dated July 9th notes "still having pain [with] walking." Claimant contends that Dr. G's note means that her pain when walking meant her back was involved. A note by Dr. G dated July 25th for the first time references back pain, saying "[both] knees

and back also hurt from lifting/limping." An August 8th ER report from Hospital 2 notes a history that claimant "states that she has had lower back pain X 2½ weeks ago" and diagnoses "lumbar strain."

A statement, dated August 17th, by (Ms. P), apparently claimant's supervisor at Hospital 2, documents that claimant "was limping and c/o pain in her back and both legs" on July 16th. (Dr. K), in a report dated August 22nd, recites a history of claimant's _____ fall, that claimant complained of back pain, and that the "back pain began _____." Dr. K concludes, apparently based on the history, that claimant "sustained an injury to her lower back after a fall at [Hospital 1]. She has had chronic low back pain since that time." The hearing officer, in considering the evidence, commented:

It cannot be overlooked that Claimant testified to immediate back pain--which is not supported in the early medical records or her statement. The medical evidence from Dr. G, the first treating doctor, mentions a variety of complaints given by Claimant, including thigh pain, which is explained and examined. It is not until July 29, 1997 that Dr. G's notes indicate back pain from lifting/limping but no evaluation was done and no causal link to the _____ injury was made. The lack of any complaints of chronic back pain from _____ through July 29, 1997 is significant.

The Appeals Panel has noted that under certain circumstances an injury may be caused by an altered gait. However, a claimant must prove by reasonable medical probability that the follow-on injury was caused by the compensable injury. In this case, Claimant was released and returned to work by July 15, 1997. The medical report from [Hospital 2] on August 8, 1997 indicated that Claimant ambulated with a "steady gait." Based on a totality of the evidence, Claimant did not establish that she sustained a back injury in the fall on _____ or from an altered gait from the injury to her knees.

Claimant, in her appeal, contends that she did suffer a back injury on _____, that she did complain to the doctors about back pain at the time, and points to Dr. K's August 22nd report. Claimant also references several other medical reports, which reference back pain, but we note all those reports were made after July 15th and/or rely heavily on what claimant gave as her history ((Dr. D) report of September 17th). We have frequently noted that a fact finder is not bound by the testimony of a medical witness when the credibility of his testimony is manifestly dependent upon the credibility of the information imparted to the witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.).

In this case, the hearing officer obviously considered all the evidence, including claimant's testimony, and placed it in context. The claimant had the burden of proving a causal connection between her compensable (injury date) fall and knee injury and her alleged back injury. The hearing officer determined that claimant had failed to prove that causal connection. We have many times held that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the

evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

On the issue of disability, it is undisputed, and at the CCH the parties appeared to be in agreement (as evidenced in claimant's closing argument), that Dr. G took claimant off work on June 30th and released her back to full duty on July 13th, and that claimant did, in fact, go back to her regular duties with Hospital 2 on July 15th. Claimant, in her appeal, simply states that she has not been able to be employed as an ICU nurse due to the June 25th injury. There is little, if any, support for that contention.

We conclude that the hearing officer's decision that claimant had failed to prove a causal connection between her compensable knee injury of June 25th and the lumbar strain to be supported by sufficient evidence and that it is not 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).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge