

APPEAL NO. 990036

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 15, 1998. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury extends to his low back, neck and right knee and that he has had disability as a result of his compensable injury from _____ to April 7, 1997, and from July 17, 1997, through the date of the hearing. In its appeal, the appellant (carrier) argues that those determinations are against the great weight and preponderance of the evidence. In his response, the claimant urges affirmance. The claimant did not appeal the hearing officer's determination that he did not establish that he had disability from April 7 to July 16, 1997.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable head injury on _____. The claimant testified that at that time, he was employed as a car salesman, and that he was walking inside the dealership to get some car keys for a customer to test drive a car. He stated that he slipped in some water on the floor and fell forward, landing initially on his right knee and then hitting the right side of his head on the floor. He stated that his head hit with such force that it bounced up and down. The claimant sustained a laceration in the area of his right eyebrow. He was taken to a clinic where he was treated by Dr. RR. Dr. RR gave the claimant stitches to close the laceration in his forehead. In progress notes of April 9, 1997, Dr. RR noted complaints of severe headaches and back pain. On April 9, 1997, Dr. RR referred the claimant to Dr. MR.

After his initial appointment, Dr. MR diagnosed posttraumatic headaches, cervical, thoracic, and lumbar strains with radiculopathy, and posttraumatic vertigo. An April 9, 1997, CT scan of the claimant's head revealed a brain contusion. Dr. MR's progress notes of April 17, 1997, refer to continuing complaints of low back pain with radiation into the legs, particularly in the left leg. Dr. MR's April 24, 1997, notes reference ongoing problems with cervical and lumbar radiculopathy. On May 22, 1997, the claimant had EMG and NCV testing which was interpreted as being "compatible with a left L5 radiculopathy." On August 15, 1997, the claimant had an MRI of his brain which was interpreted as unremarkable. In a letter of August 20, 1997, Dr. MR discussed the mechanism of injury, as follows:

In reviewing the patient's mechanism of injury, that being falling on a wet floor, he injured his head but also his neck -- cervical and lumbar regions. The patient did not fall flat on his head but he also landed on his right knee, right shoulder, and then like a whip he had sudden lateral extension of the neck and head causing a closed head injury and a laceration to the right supraorbital area (approximately 13-14 stitches were required). The patient has a periorbital hematoma. As a consequence of the fall, he injured his

neck and his low back upon the sudden impact of landing on the wet floor at work. Approximately one month ago, the claimant was also involved in a motor vehicle accident when he broadsided another vehicle that suddenly cut in front of him. He was taken to the emergency room at [hospital], x-rays were obtained, and apparently were negative. Since then his preexistent cervical and lumbar radicular symptomatology got worse.

Dr. MR ordered MRI testing and approval of that testing was delayed by the carrier. The claimant underwent both cervical and lumbar MRI testing on April 14, 1998. The claimant's lumbar MRI revealed a central disc bulge at L5-S1 and his cervical MRI revealed herniation at C5-6 and C6-7.

Dr. P examined the claimant on March 17, 1998, at the request of the carrier. Dr. P's impression was "degenerative disc disease about the cervical and lumbar spine, with superimposed traumatic event as a precipitating episode;" "laceration about the right periorbital region," and "contusion to the cranium." In addition, Dr. P opined "[t]he history of the mechanism of injury, that is the fall, is compatible with the continued symptoms in this patient's cervical and lumbar region, and indeed those into his left upper extremity." Finally, Dr. P stated:

The injury, as the patient describes, may represent an excessive demand on the compromised ability of the deteriorating joint to function and withstand the stress placed upon it. The combination then of the pre-existing degenerative changes and the superimposed demand of the traumatic incident may both contribute to the patient's symptomatic pattern.

Dr. M also examined the claimant at the request of the carrier. Dr. M noted that the claimant's examination was compatible with peripheral neuropathy in both arms and both legs. Dr. M opined that this was not related to the injury and stated that "peripheral neuropathy could be seen in a person who has overused alcohol previously." The claimant denied having abused alcohol, insisting that he is only an occasional social drinker. In a letter of September 22, 1998, Dr. P agreed that if the claimant had peripheral neuropathy, it was not "traumatically-induced." In treatment notes of October 15, 1998, Dr. MR stated that the claimant's EMG testing "showed left L5 radiculopathy and also superimposed neuropathy."

The claimant testified that he worked from April 7, 1997, to July 17, 1997, when he was terminated by his employer. He acknowledged that he was involved in a motor vehicle accident on (subsequent date of injury) while he was driving a company car. He stated that he was not able to work a full day after his injury and that some days he was able to work two hours and some days he was able to work up to six hours. However, he further testified that the employer picked him up and drove him to and from work for a large part of the time he continued to work. The claimant introduced a "To Whom it May Concern" letter of January 8, 1998, from Dr. MR stating that the claimant was "unable to work due to a work related injury" and off-duty slips of April 27, 1998, and May 15, 1998, respectively.

The carrier argues that the hearing officer's determinations that the claimant's compensable injury extends to his neck, low back, and right knee, are against the great weight and preponderance of the evidence. That issue presented a question of fact for the hearing officer to resolve. Generally, an extent-of-injury issue can be established on the basis of the claimant's testimony alone, if it is believed by the hearing officer. Geer v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). In her discussion section, the hearing officer noted that the claimant had complaints of neck and back pain as early as Dr. RR's April 9, 1997, report. In addition, she noted that Dr. MR diagnosed cervical and lumbar strains with radiculopathy at his initial appointment. The hearing officer similarly noted that diagnostic testing confirmed the lumbar radiculopathy and that cervical and lumbar MRI testing revealed cervical herniation and a disc bulge at L5-S1. Finally, the hearing officer noted that Dr. MR has repeatedly opined that the claimant's neck and back were included in the _____, compensable injury and that Dr. P opined that the claimant's mechanism of injury was compatible with continuing symptoms in his cervical and lumbar spine. In arguing that the hearing officer's extent-of-injury determinations are contrary to the great weight of the evidence, the carrier focuses exclusively on the diagnosis of peripheral neuropathy in the claimant's extremities and emphasizes that Dr. P and Dr. M both state that the neuropathies were not caused by the compensable injury. The carrier ignores the diagnosis of cervical and lumbar strains with radiculopathy, cervical herniation, and lumbar disc bulge. The hearing officer considered those arguments at the hearing and was not persuaded by them. The significance, or lack thereof, of the factors emphasized by the carrier was a matter left to the discretion of the hearing officer. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). As such, it was her responsibility to consider the testimony and evidence before her and to determine what facts had been established. The hearing officer was acting within her province as the fact finder in crediting the claimant's testimony and the evidence of causation from Dr. MR and Dr. P to find that the claimant's compensable injury extends to his neck, low back, and right knee. Our review of the record does not demonstrate that those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to reverse the extent-of-injury determination on appeal.

The carrier's challenge to the hearing officer's disability determination is premised upon the success of its argument concerning the extent-of-injury determinations. Given our affirmance of those determinations, we likewise affirm the hearing officer's disability determination.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge