APPEAL NO. 990098

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 December 18, 1998. He (hearing officer) determined that the respondent's (claimant) low back injury was a result of the compensable injury she sustained on _____. The appellant (carrier) appeals this determination, contending that it is wrong and against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

No witnesses testified at the CCH. According to the documentary evidence, the claimant sustained a compensable cervical disc herniation injury in 1994, which was not the subject of this claim. In answers to interrogatories, the claimant stated that she was walking "very fast" at work on _____, when her knee gave out and she lost her balance. She held onto a counter to keep from falling and said that, in addition to right leg pain, she felt pain in her lower back and hip. She returned to Dr. G for treatment on January 6, 1998, but his report does not mention a _____, injury.[1] She stated the reason for her visit on January 26, 1998, was "pain in leg, hip, thigh, knee, & ankle, & foot." She also wrote in answer to interrogatories that when she initially only complained of hip pain "I really meant my waist and lower back." Dr. G's diagnosis as a result of this visit was limited to the right knee. His first diagnosis of a low back injury is contained in a report of a February 10, 1998, visit in which he diagnosed lumbar strain and sciatica. An MRI on October 6, 1998, disclosed disc desiccation and degenerative changes at L4-5 and L5-S1, but no bulging or herniation. On October 15, 1998, Dr. G considered the strain secondary to degenerative disc disease.

Dr. G referred the claimant to Dr. C. On January 30, 1998, Dr. C diagnosed sciatica and lumbar strain and noted that the claimant's pain was "localized to the right lower lumbar region, as well as the right S1 joint and right buttocks."

Dr. V examined the claimant at the request of the carrier on April 6, 1998. He noted that the bone scan was abnormal for the lumbar spine and maybe lumbar herniation. His "best guess," however, was that the myelopathy was from the "cervical injury." The carrier did not dispute the compensability of a right leg injury.

The claimant had the burden of proving that she injured her low back at work on _____, as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This presented a question of fact for the hearing

[1] Dr. G does state in a July 27, 1998, report that the claimant "on one of her visits" reported a back injury, but he did not mention this anywhere "because she was not approved and that was a completely separate accident."

officer to decide. In his decision and order, the hearing officer explained that the claimant did not initially complain of a low back problem "because she had no muscle spasms or other injurious effect that caused her to have any pain in the low back itself." Whether this statement is consistent with the evidence is largely irrelevant in light of his specific finding of fact that her compensable injury of _____, extended to the low back and included an acute lumbar strain and disc bulging. The carrier appeals this determination for three reasons. First, it argues that if, as the hearing officer commented, the claimant did not have muscle spasms or other injurious effects to her lower back, she did not have an injury, as defined in the 1989 Act as "damage or harm to the physical structure of the body." Section 401.011(26). We disagree. The immediate effects of an injury are not solely determinative of the extent of injury. Texas Workers' Compensation Commission Appeal No. 93979, decided December 14, 1993. The carrier introduced essentially no medical evidence to support its position that muscle spasms or "other injurious effects," however defined, must as a matter of law be present for an injury to exist. In this case, the hearing officer found at a minimum a strain, which we have held can constitute an injury under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 951547, decided October 30, 1995.

Second, the carrier argues that the evidence established only a degenerative back condition, which it contends is an ordinary disease of life, not a work-related injury, and points to Dr. V's opinion that the condition of the spine is "simply degenerative" and Dr. G's comment that the strain was secondary to degenerative disc disease." The accident in this case need only be a cause of the claimed low back injury, not the only cause. The carrier did not raise a sole cause defense based on its theory that the lumbar sprain and bulge could only be caused by the degenerative condition or the prior injury. *See* Texas Workers' Compensation Commission Appeal No. 970315, decided April 7, 1997. Thus, Dr. G's use of the word "secondary" does not as a matter of law compel a finding that the injury was not work-related. Dr. V's unwillingness to commit to a theory of causation could be accepted or rejected by the hearing officer in reaching his findings of fact in this case.

Third, the carrier argues that the earlier cervical injury and its causative role in the low back sprain were ignored by the hearing officer.[2] As noted above, the fall on _____, need only be a cause of the claimed low back injury, not the only cause. Thus, even though the earlier cervical injury may have had some role in the later injury, that would not preclude the later injury from being compensable as a new injury. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). He considered conflicting and inconsistent evidence and concluded that the claimant's compensable injury of _____, included a low back injury. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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.

[2]The carrier also suggests in its appeal that it was harmed by Dr. G's refusal to release "all the medical records of the Claimant," particularly those relating to the 1994 cervical injury. There was no evidence that the carrier sought to subpoena such information in the absence of Dr. G's cooperation.

1986). Applying this standard of review to the record of this case, we find the evidence, including the opinion of Dr. G and the written statements of the claimant, sufficient to support the hearing officer's resolution of the disputed issue.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCUR IN RESULT:

I concur in the result. *See* Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998, which also dealt with a knee giving way at work without a fall. Since the appeal does not address this point, I can concur in the result.

Joe Sebesta
Appeals Judge