

APPEAL NO. 990199

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 4, 1999, a contested case hearing was held. With regard to the issues before her, the hearing officer determined that appellant (claimant) has osteoarthritis in her left hip but that the "osteoarthritis was not initiated or caused" by claimant's fall in August 1997; therefore, claimant "did not sustain an injury on _____," and "did not have disability because she did not sustain a compensable injury."

Claimant appeals, contending that claimant's testimony and the medical evidence "establishes that [claimant] developed post-traumatic arthritis because of a fall occurring on _____." Claimant recites much of the testimony, explanations and evidence which support her position. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

This case is not as straightforward as it may appear. Claimant is a medical doctor, assistant professor of radiology at one of the self-insured's medical facilities, and is a "diagnostic radiologist." Claimant testified both as the claimant and as an expert medical witness. Secondly, although initially claimant and the self-insured agreed that the claimed date of injury was _____, claimant's subsequent testimony was that she was not sure of the date of injury and that it could have been anywhere from mid to late August 1997. Thirdly, some of the medical records are ambiguous and subject to a different interpretation.

Claimant testified that on _____, as she was walking from one building to another, she slipped on a wet spot on the floor and fell on her left side. She said that her dress was torn, that she went to the library to sew up her dress, that she was in severe pain, that she then went to the radiology department where she informally had an x-ray of her left hip taken to rule out a fracture, that she and a colleague read that x-ray as showing no fractures and being normal, and that she believed that she had only sustained a bruise which would resolve in time. (Reporting is not an issue as claimant reported the fall and injury to her supervisor the day of the fall.) Claimant said that she took various over-the-counter medications, but her hip continued to become more painful. Eventually, on December 18, 1997, claimant consulted Dr. C, who, claimant said, was an orthopedic surgeon. On a "Past Medical History" form claimant wrote "Bucked off a horse and injured back—currently have left hip pain—that's why I am here." According to claimant, Dr. C reviewed the x-ray that was taken in August 1997, found no abnormality and diagnosed bursitis. In a progress note dated December 18, 1997, Dr. C wrote:

41 year old radiologist at [hospital] with a several month history of left hip pain. She has fallen on the hip on ice several times, beginning in 1996.

There is no mention of a slip and fall in August 1997. Dr. C diagnosed bursitis and prescribed anti-inflammatory medication and, according to claimant, administered a steroid injection. According to other medical records and claimant's testimony on cross-examination, claimant then went to her parents' home for the Christmas holidays where she went cross-country skiing.

Claimant was seen by Dr. B, apparently a sports medicine specialist according to the letterhead on his report, on January 9, 1998. In a progress note of that date, Dr. B writes:

This 41 y/o radiologist without antecedent trauma has had progressive pain in her left hip since the fall. The pain has gotten to where basic activities of daily living are difficult.

The hearing officer comments that Dr. B "apparently uses the word 'fall' as a season rather than as an event." Claimant, in her appeal, states there is "no basis whatsoever" for the hearing officer's interpretation, which "is simply lubricous [sic]." An MRI was performed and Dr. B goes on in his January 9, 1998, note to say:

[Claimant] has evidence of progressive left hip osteoarthritis. There is a remote history of a fall and perhaps this is what precipitated the condition in this otherwise young, healthy individual. She is a candidate for a left total hip replacement given that these symptoms have been present for several months and are not abating with rest or anti-inflammatory medicines.

In a letter report dated January 12, 1998, Dr. B writes to claimant that the x-rays and MRI show "developing progressive osteoarthritis in the left hip" and that surgery "is inevitable."

Claimant was subsequently examined and evaluated on January 16, 1998, by Dr. A, identified as a rheumatologist in another report, who, in a handwritten report of that date, for the first time recites the history of a slip and fall "6 months ago" walking down a hall. That report recites claimant is very active with "walking, roller blading, weight lifting, etc.," and claimant's family history of arthritis with hip and knee replacements. Dr. A read the MRI and concluded that it was "most consistent [with] osteoarthritis [but] superimposed avascular necrosis cannot be excluded."

Claimant was also evaluated by Dr. MC, an internist, on June 9, 1998. The history that Dr. MC recites is that claimant fell in a puddle of water while crossing the street in front of the hospital. Dr. MC notes the cross-country skiing over the 1997 holidays and that the following day claimant was "in so much pain that she was unable to walk." Dr. MC suggests that claimant is "[s]tatus post fall with probable missed fracture, now with destruction of that joint, requiring total hip replacement." Claimant was scheduled for a left hip arthroplasty on July 8, 1998.

On July 6, 1998, two days before her scheduled hip replacement surgery, claimant's attorney referred claimant to Dr. K, a chiropractor. In a seven-page report of that date Dr. K recites a history of a slip and fall on (incorrect date of injury) (although the date of injury is listed as _____), in a building, claimant's treatment by Dr. C, evaluations by Dr. B, Dr. A and Dr. MC, and the proposed hip replacement surgery by Dr. R. Dr. K diagnoses "[p]osttraumatic avascular necrosis or posttraumatic osteoarthritis of the left hip joint," which "within medical probability" is related to claimant's work-related injury. The hearing officer notes that Dr. K's "opinion is not persuasive and is controverted by the other medical records."

Dr. R performed a "left total hip arthroplasty" for degenerative arthritis and joint disease of the left hip on July 8, 1998. Claimant was to be off work three months. Claimant testified that the surgery was successful in relieving much of her pain and that she has returned to work. Dr. H, who, claimant testified, is chief of radiology, in a report prepared on November 4, 1998, read an x-ray which the report says was performed on August 13, 1997, at 11:00 hours (approximately two weeks before claimant's fall). (This is apparently the original x-ray taken very shortly after claimant's fall.) That report notes "hip pain after fall" and notes "changes in the contour and trabecular pattern of the superior pubic ramus, on the left, are suggestive of old trauma." It was on the testimony about this report that claimant became unsure of the date of the fall. The hearing officer summarized claimant's testimony regarding the x-ray as saying:

Claimant asserted the correct x-ray date was (incorrect date of injury), and [Dr. H] made up the date of August 13, 1997 when he interpreted the film on November 4, 1998 because proper protocol had not been used in ordering the x-ray.

The hearing officer, in her Statement of the Evidence, sums up her interpretation of the evidence that:

Claimant probably did fall sometime in _____, but her prior medical and family history does not substantiate this fall as the etiology of her degenerative joint disease. [Dr. H's] x-ray of August 13, 1997 noted changes in the pubic bone and acetabulum caused by old trauma. Claimant told [Dr. C] she had fallen on ice several times since 1996 and had been bucked off a horse. She told [Dr. A] about a previous left pubic bone fracture for which surgery was required. The preponderance of the credible evidence does not support a finding that Claimant sustained damage or harm to her left hip on _____ or that her osteoarthritis naturally resulted from a fall on _____.

Claimant appeals the hearing officer's decision, emphasizing her testimony, Dr. K's and Dr. R's reports, explaining inconsistencies in Dr. C's records, and commenting on Dr. B's note and report. Claimant contends that Dr. R assessed "post traumatic osteoarthritis of the left hip" (in an August 17, 1998, report), which was more accurate than Dr. R's

diagnosis of degenerative joint disease and degenerative arthritis as noted in the operative and postoperative reports.

We can only say that the various medical reports, histories, and assessments are subject to differing interpretations. As previously noted, there are inconsistencies in the histories given by the claimant to various doctors and the circumstances surrounding the taking and assessment of the original _____ x-ray. With the evidence in this posture, we have frequently noted 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). Although another fact finder may have drawn different inferences from the evidence, which could have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge