

APPEAL NO. 990387

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 2, 1999, a contested case hearing was held. With respect to the issue before her, the hearing officer determined that the compensable injury of the respondent (claimant) extended to include the back. Appellant (carrier) appealed this determination on sufficiency grounds. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant suffered a back injury on _____, in addition to his compensable knee injury. Carrier asserts that: (1) the medical notes of Dr. D documenting a back injury do not appear to be in the correct chronological order; (2) claimant said he did not notice back pain until approximately three months after his compensable knee injury; (3) there is no evidence that claimant has a herniated disc and Dr. D's opinions are flawed because they mention a herniated disc; (4) claimant's mere back pain does not mean that he sustained a back injury; and (5) the medical evidence showing a back injury does not meet the standards for scientific evidence under E. I. duPont de Nemours and Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995).

Claimant testified that he was working on "cleaning detail" on _____, when he fell into a hole after grating he was walking on slipped, causing him to fall. Claimant said he tried to grab onto a wall "in a twisted position" and he fell back onto steel rollers. Carrier accepted liability for claimant's knee injury. Claimant said he did not report a back injury when he went to see a doctor about an hour or two after he fell. Claimant said he could only think about his knees at the time because of the pain he was experiencing. Claimant said he first began to notice pain in his back in March 1998, but said he felt like the pain would go away. He said he called and told the receptionist for Dr. D before April 29, 1998, to let them know he was having back pain. He testified that he went to see Dr. D and complained of back pain after he first saw Dr. R. Claimant said he did not injure his back any other way and said he had not had any prior back problems.

A Specific and Subsequent Medical Report (TWCC-64) from Dr. D states that claimant's diagnoses are internal derangement of the knee and a lumbosacral strain. In an April 29, 1998, medical note, Dr. D stated that claimant now has back pain and that he has tenderness over the "right S-I joint." In a May 6, 1998, letter, Dr. R stated that there is no definite evidence of a generalized neuropathy, myopathy, lumbar nerve root irritation, or radiculopathy. In a May 13, 1998, letter, Dr. D stated that claimant complained of a back injury "originally." In a July 20, 1998, letter to carrier, Dr. C stated that "claimant did complain of some back discomforts and these were related to your office; however, the back evaluation was denied. His back was not examined." Dr. C did not say when he examined claimant. A September 23, 1998, MRI report states that:

There is mild diffuse bulging of the disc with very small slightly broad-based posterocentral disc protrusion with minimal thecal sac indentation and no central spinal stenosis. There is mild to moderate bilateral facet joint hypertrophy with mild to moderate foraminal narrowing contributed to by the disc bulge and facet joint hypertrophy with questionable abutment of the posterior surface of the left foraminal L4 nerve root by hypertrophied facet joint.

In a December 7, 1998, letter, Dr. D stated that claimant has a herniated disc and that the herniation was caused by the twisting when claimant fell.

The hearing officer determined that claimant suffered a compensable back injury on _____. She stated in the decision and order that "it was not until March 1998, when the right knee pain subsided, that claimant noticed he was experiencing lower back pain" The hearing officer said that "the mechanism of injury is consistent with the claimed injury as described by claimant."

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Existence and extent of injury are fact questions for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996. The hearing officer is the sole judge of the weight and credibility to be given to the evidence and the relevance and materiality to assign to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, none, or any part of any witness's testimony and may properly decide what weight she should assign to the evidence before her. Campos. We will not substitute our judgment for the hearing officer's where her determinations are supported by sufficient evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this case, the hearing officer weighed the evidence and determined that claimant's injury extended to her low back. This extent-of-injury issue involved a fact question for the hearing officer, which she resolved. Appeal No. 951959. The hearing officer could determine that claimant sustained a compensable injury based on his testimony alone, if the hearing officer found that testimony credible. The hearing officer could decide to believe all, none, or any part of the evidence and decided what weight to give to the evidence, including the complained-of medical evidence. Campos, supra. The fact that claimant delayed in complaining of a back injury is a factor for the hearing officer to consider in resolving the fact issues in the case. The hearing officer also considered and weighed the evidence regarding whether Dr. D's records were shown to be out of chronological order. After reviewing the evidence, as set forth above, we conclude that the hearing officer's determination is not so against the great weight and preponderance of the

evidence as to be wrong or manifestly unjust. Cain, supra. Regarding whether claimant sustained only pain, there was medical evidence from Dr. D that claimant sustained back strain, which is an injury under the 1989 Act.

Regarding carrier's contention that the medical evidence showing a back injury does not meet the standards for scientific evidence under E. I. duPont de Nemours and Co. v. Robinson, supra, we note that the hearing officer could find that claimant sustained a back injury based on his testimony alone. The hearing officer apparently found claimant's testimony credible in this case.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge