APPEAL NO. 990406

This appeal is considered in accordance with 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. The issues concerned whether the respondent, who is the claimant, sustained a compensable injury; whether he was entitled to lifetime income benefits (LIBS) based upon an injury to the spine that has resulted in the permanent and total paralysis of both legs; and whether he had disability from February 5 through May 12, 1997.

The hearing officer found that claimant sustained an injury to his spine on _____, from which he had disability for the period from February 5 through May 11, 1997. He further found that the claimant was entitled to LIBS retroactive to the date that disability began.

The appellant (carrier) has appealed. The carrier argues that the medical evidence does not support, to a reasonable medical probability, the causal link between claimant's fall and the onset of his paralysis. As part of this argument, the carrier points to the delay in the manifestation of any symptoms which eventually became paralysis. The carrier states that the hearing officer has put on it the burden of proving that a disease caused the claimant's paralysis. The carrier argues that the medical evidence presented does not rise to the requirements of two recent Texas Supreme Court cases which deal with expert evidence. The carrier argues that it is essential to fair justice for a hearing officer to identify the evidence he relied upon in making his conclusion. The carrier argues that the Texas Workers' Compensation Commission has the burden to provide "a detailed analysis of the evidence it thinks supports any parties' position" when the case is unique and difficult. The carrier argues that its own medical evidence is the more credible. The carrier points out that it did not seriously dispute the LIBS analysis or advance transverse myelitis as an alternative cause of the claimant's paralysis, and there is no argument concerning an appeal of the merits of the findings of entitlement to LIBS or disability except to the extent that they are dependent upon the finding of a compensable injury. The claimant responds that the decision is supported by the medical evidence from the various doctors who have treated him. The claimant asserts that case law cited by the carrier is not applicable to an administrative proceeding and the carrier has not, in any case, made argument as to how those decisions were not followed. The claimant disputes the carrier's assertion that the hearing officer has not identified the medical evidence he found persuasive. The claimant discusses the evidence that supports the decision. The claimant states that expert evidence of causation was not, in any case, required under the facts of this case. The claimant points out that contrary to its assertion that it did not advance transverse myelitis as an alternative cause of the claimant's paralysis, nearly all of its own medical evidence adopts this as the premise.

## DECISION

We affirm the hearing officer's decision and order, finding them sufficiently supported by the evidence in this case.

The claimant, a man in his early 40s, was employed by (employer) as an equipment installer. This entailed field work in various towns and rural areas. Claimant said that he was to perform a line test on _____, and was out alone performing some work in preparation for this. His associate, (Mr. W), was in a town 14 miles away, waiting to perform his portion of the test. Photographs of the area are in evidence. They show that the cabinet on which the claimant was working is surrounded in a crescent moon shape by a shallow ditch, which is bordered by an above-ground level embankment of rocks. The edge of this ditch nearest the cabinet comes fairly close to the cabinet. The claimant said he had an armful of equipment ad was circling around to another area of the cabinet when the edge of the ditch gave way and he fell backward. Claimant said he did not want to drop the equipment and twisted in order to take the brunt of impact on his right shoulder but was not successful. He said he fell into and across this ditch, striking his shoulder and lower thoracic and upper lumbar area on the rock pile. The claimant said he also wrenched his knee. He called in to his coworker and told him the test would be delayed because of what happened. He agreed that they joked about him falling. A sworn statement from Mr. W indicates that claimant indeed reported the incident that day and minimized it, speculating that if he reported it officially his supervisor would laugh. Mr. W said that claimant sounded strained and that Mr. W made the comment to claimant that he knew about the incident in case something came up later. Claimant said he was sore and ached a great deal, but his knee and shoulder pain subsided over the next few days.

The claimant's shift was a four-day, 10-hour-per-day week, generally from Monday to Thursday. He said that he worked on the 22nd and 23rd, but was scheduled to be off January 24the to the 26th. The claimant said his lower back continued to ache and on the evening of January 25th he began to have a burning sensation in his back. As claimant described his symptoms, they gradually increased and he sought medical treatment at an emergency room (ER) on February 2, 1997, as his symptoms grew to include urinary difficulty and tingling in his feet. The claimant went to the ER because he was going out of town the next day on his job and thought he might have a kidney infection. The doctor at the ER ruled out a kidney infection, but thought he might have a muscle strain and prescribed Lodine. Claimant went out of town and said that, in spite of his medication, his symptoms increased; he called his wife to make an appointment with his family doctor for when he arrived home. However, on Wednesday morning, February 5th, in his hotel room, his right leg gave way and he collapsed. Claimant called his employer and said he was going to the doctor, and he drove home and went straight to his family doctor, Dr. M, who sent him to the hospital. The claimant said he was a patient until February 12th, undergoing a battery of tests and was then transferred to a hospital in San Angelo for further evaluation. Claimant said he was paralyzed from the navel down by the time of his transfer. Claimant also described a subsequent transfer to a hospital in City 1, after which he voluntarily transferred to a rehabilitation facility that he felt was of more benefit.

Claimant said he was told around February 5th by Dr. G that Guillane-Barre syndrome was suspected, but this was ruled out on the 6th after further testing. Claimant had been diligent in rehabilitation and, at the time of the CCH, was able to exercise some voluntary movement of his left leg, although he could not move with his right. He used a wheelchair to get around, although, with braces and a walker, he could ambulate 50-60 yards. Claimant had gone back to work on May 12, 1997, in a desk job for his employer. He said he had been told that he had incomplete paraplegia, which was most likely permanent.

The etiology of the claimant's paralysis is the source of controversy, although the claimant's doctors and consulting doctors for the carrier (who have reviewed claimant's records but not examined him) do not dispute that there is an area of hemorrhaging in claimant's thoracic spine. The medical evidence is as follows. On April 14, 1997, claimant's treating doctor, Dr. E, medical director of a rehabilitation facility that has treated the claimant, opined that the paraplegia resulted from an apparent spinal cord hemorrhage with symptoms beginning a week or so before the actual paraplegia.

Another doctor who treated the claimant was Dr. X, an associate professor of neurology at an area medical school. Dr. X's resume is in evidence, showing a great deal of his expertise to be in the area of stroke and cerebrovascular disease. Dr. X said claimant had a T10 paraplegia and that repeated MRI scans showed an area of subacute hemorrhage at this level. He consulted with a colleague, Dr. K, a neurosurgeon, whose own clinicial experience included "post-traumatic infarction related to very minimal and very lateral disc herniations which occlude the radicular artery." In apparent response to an opinion of one of the carrier's doctors, Dr. X specifically stated that neither he nor Dr. K had seen transverse myelitis in which there was a hemorrhaging into the spinal cord as in claimant's case. Dr. X concluded that claimant's paralysis was related to his fall at work.

On November 6, 1998, Dr. E certified maximum medical improvement with an 85% impairment rating. Dr. E noted that claimant's condition was permanent and his legs were not functional. Dr. L, a consulting neurosurgeon, stated in a July 20, 1998, letter that a tumor was ruled out and that claimant had a lesion "consistent with an infarction of the spinal cord related to his history of trauma, possible directly or by thrombosis or embolism."

An MRI report dated May 7, 1998, had found no disc herniation or fracture. The reporting doctor also stated that there was no evidence in the spinal column to suggest that the hemorrhage was post-traumatic.

Dr. L's initial impression when he saw claimant on February 7, 1997, was lower thoracic myelopathy, etiology uncertain. Dr. CR, another doctor at the hospital where claimant was initially tested, noted that an MRI revealed a hemorrhagic and ischemic event with surrounding edema felt to represent "perhaps transverse myelitis." Claimant's medical records note in his past history of illness that he had glaucoma, for which he had had surgery in one eye.

Most of the carrier's medical opinions were from Dr. H, a neurosurgeon. Dr. H stated his factual assumption that claimant had no onset of symptoms until eight days after he fell. He stated that the paraplegia, which was complete on the 16th day after the fall, was not in reasonable medical probability related to the fall, but was instead the result of transverse myelitis. He disputed Dr. X's opinion, stating that claimant, in fact, had no lateral herniation and that the location of the hemorrhage in the middle of the vertebral body ruled out a herniation. Dr. H argued that a hemorrhage in the spinal cord usually made itself known immediately. Dr. H said he had never seen a case of spinal cord hemorrhage related to trauma where there was not also an associated bony injury.

While the claimant argues that the factually similar decision in Texas Workers' Compensation Commission Appeal No. 972171, decided December 8, 1997, is dispositive in this case, we do not necessarily agree. The burden is always on the claimant to prove causation, whether or not a factually similar case has been favorably decided. More to the point, the appealed issues in Appeal No. 972171 had to do with whether "incomplete paralysis" fulfills the criteria for payment of LIBS and whether the inception date for LIBS was correctly decided. Neither of those counterpart findings in claimant's decision here has been appealed by the carrier. Appeal No. 972171 does not stand for the proposition that paralysis with delayed onset following a back injury is, *a fortiori,* a compensable injury because the causation aspect of that case was not appealed.

We would note at the outset that while chronology alone does not establish a causal connection between an accident and a later diagnosed injury, Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994, neither does a delayed manifestation, or the failure to immediately mention injury to a health care provider, necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The passage of time between an accident and the onset of symptoms is a fact, along with others, for the hearing officer to weigh. We would note that although carrier's view of the time line of symptoms argues that there was a material two-week delay, there was evidence that the hearing officer could believe that claimant had back pain which never went away and that he began a downward progression on or about January 25th or 26th, a matter of a few days after his fall.

The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We cannot agree with the carrier that the evidence in this case linking the hemorrhage to claimant's fall does not rise to the level of reasonable medical probability. Nor can we agree that the hearing officer's decision fails to give notice as to which medical reports he deemed persuasive. His discussion concerning the presence or absence of transverse myelitis was plainly in response to the carrier's tender of a medical opinion that this, rather than trauma and hemorrhage, was the cause of claimant's paralysis. Our review does not indicate that the burden of proof was shifted to the carrier.

An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). In this case, there is sufficient evidence to support an injury and the award of LIBS. We accordingly affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge