

APPEAL NO. 990506

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 February 4, 1999. With respect to the issue before him, the hearing officer determined that the respondent's (claimant) herniated disc at L5-S1 is a result of his compensable injury of \_\_\_\_\_, but that he did not compensably injure his neck, left shoulder, and left elbow in that incident. In its appeal, the appellant (carrier) argues that the determination that the herniation at L5-S1 is a result of the compensable injury is against the great weight of the evidence. In his response, the claimant urges affirmance. The claimant did not appeal the determination that his compensable injury does not include injuries to his neck, left shoulder, and left elbow.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on \_\_\_\_\_. The claimant testified that he was working as a car salesman at the time of his injury. He stated that he was injured when he slipped and fell on some stairs that were icy. He explained that he was going up the stairs, his feet slipped out from under him and he fell down the stairs to the ground, landing on his back. The claimant began treating with Dr. T, an orthopedic surgeon, on January 24, 1994. In his Initial Medical Report (TWCC-61), Dr. T diagnosed a lumbar strain and noted that x-rays of the claimant's lumbar spine revealed degenerative disc disease. On April 1, 1994, the claimant had a lumbar MRI. The report states that the testing revealed minimal central disc bulges at L3-4 and L4-5 with no evidence of direct neural impingement and a minimal central disc protrusion at L5-S1 that "extends into epidural fat and does not impinge on either thecal sac or nerve roots." The impression section of the MRI report states, "[n]o evidence of extruded disc fragment or direct neural impingement at any level" and "[m]ultilevel degenerative disc changes without direct neural impingement . . . ." In a report of April 20, 1994, Dr. T stated that the lumbar MRI "showed degenerative disc at L3/L4, L4/L5, and L5/S1. In addition, it showed disc rupture at L5/S1." The claimant testified, and the medical reports indicate, that he had ongoing back pain from 1994 to 1996, which was largely managed with chiropractic care. In a treatment note of December 16, 1996, Dr. SW noted that the carrier was denying further chiropractic care. In progress notes of March 7, 1997, Dr. JW stated that the claimant was doing fairly well with his ongoing back problems until conservative treatment was denied. Dr. JW noted that, before treatment was suspended, the claimant was able to continue working as a car salesman and further stated, "[t]his certainly is a success in nonoperative treatment given that he has significant objective pathology in his back and MRI showing an L3-S1 degeneration of the disk with rupture and broad based protrusion L5-S1." In another note of the same date, Dr. JW stated that the claimant's condition had been deteriorating over time and opined that "with reasonable medical certainty" his \_\_\_\_\_, compensable injury was the cause of his current back problems.

In a report of August 11, 1998, Dr. J, a neurosurgeon, stated that the claimant had come in for a "new problem," noting that he "had previously been seeing him in follow up after anterior cervical fusion." Dr. J stated that the claimant's complaint was "recurrent left leg pain," which "is almost incapacitating" and "has been a problem off and on since an on the job injury in \_\_\_\_\_ . . . ." Dr. J's impression was "[l]eft S1 radiculopathy with sciatica most likely due to disc herniation L5-S1." Dr. J ordered an MRI. On August 26, 1998, the claimant underwent lumbar MRI testing, which demonstrated a left paracentral disc herniation at L5-S1, causing posterior displacement and compression of the left S1 nerve root and a central disc bulge at L4-5. On October 30, 1998, Dr. J performed a left microdiscectomy at L5-S1. His operative report lists findings of an "[e]ncapsulated disc herniation with an extruded free fragment directly impinging on the S1 nerve root."

Dr. H, an orthopedic surgeon, testified on behalf of the carrier. Dr. H stated that he reviewed the claimant's medical records but he did not examine him. In addition, Dr. H acknowledged that he reviewed the April 1, 1994, MRI report but that he did not review the actual film. Dr. H testified that the April 1, 1994, MRI report did not show disc herniation, extruded disc fragments, or neural impingement at any level. Dr. H stated that the condition shown by the 1998 MRI, a herniated disc at L5-S1, was different than the condition demonstrated on the 1994 MRI. Dr. H responded, "no, absolutely not" to a question of whether the herniation at L5-S1 was a direct or natural result of the \_\_\_\_\_, compensable injury. Dr. H opined that it was not "medically reasonable" to suggest that the \_\_\_\_\_ condition progressed to herniation, stating that such a conclusion "does not even rise to the level of common sense." On cross-examination, Dr. H stated that his opinion that the claimant's \_\_\_\_\_ injury resolved was based upon his belief that there was no evidence of ongoing treatment "with references to objective findings as compared with subjective complaints."

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of that injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the testimony and evidence before him and decides what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

In this instance, the hearing officer determined that the claimant's herniated disc at L5-S1 is a result of the compensable low back injury of \_\_\_\_\_. In so doing, he noted that when the claimant's objective findings as demonstrated on the April 1, 1994, and the August 26, 1998, MRIs, are considered in conjunction with the medical reports

documenting the claimant's ongoing back pain from the date of injury, they "clearly show that the Claimant has sustained his burden of proof and that his condition ultimately resulting in spinal surgery in 1998 is a result and an injury that naturally flowed from his compensable injury of \_\_\_\_\_." In arguing that that determination is against the great weight, the carrier emphasizes Dr. H's testimony, which emphatically denies a causal connection between the \_\_\_\_\_, compensable injury and the herniated disc at L5-S1. As noted above, there was substantial conflict in the medical evidence in this case as to whether there was a disc "rupture" or "herniation" demonstrated at L5-S1 on the 1994 MRI, which became progressively worse. It was the hearing officer's responsibility as the fact finder to resolve that conflict. A review of the hearing officer's decision demonstrates that he elected to give more weight to the claimant's testimony and the medical evidence indicating a causal connection between the \_\_\_\_\_, compensable injury and the L5-S1 herniation than to the evidence to the contrary. The hearing officer was acting within his province as the fact finder in so resolving the conflicts in the evidence. Our review of the record does not demonstrate that the determination that the L5-S1 herniation is a result of the compensable injury is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool, supra; Cain, supra.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge