

## APPEAL NO. 990624

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On March 1, 1999, a hearing was held. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on (date of injury for 1998), that claimant's 1996 injury is not a producing cause of claimant's symptoms or disability after (date of injury for 1998), and that claimant has had disability from August 15, 1998, through the date of hearing. Appellant (carrier 1) asserts that these determinations are against the great weight and preponderance of the evidence, stating that claimant still had symptoms from the 1996 injury, that claimant in his prior statement attributed his condition to the 1996 injury, that medical evidence showed no new injury, and that claimant was seeking to renew his period of entitlement to income benefits. Claimant did not respond. Respondent (carrier 2) replied that the decision should be affirmed.

### DECISION

We affirm.

Claimant worked for (1998 employer) on (date of injury for 1998). Carrier 1 insured 1998 employer. On (date of injury for 1996), claimant worked for (1996 employer). Carrier 2 insured 1996 employer.

Prior to (date of injury for 1998), the evidence indicated that claimant had injured his low back in 1996 when he lifted a patient while working for 1996 employer. He received medical care for a lumbar strain through August 23, 1996, and was released to return to work on August 19, 1996. Claimant testified that he has not sought medical care for his back since that time. He was evaluated on October 8, 1996, and found to have reached maximum medical improvement (MMI) on August 19, 1996, with a zero percent impairment (IR). X-rays showed degenerated discs throughout the lumbar spine. Claimant did testify that he continued to have symptoms of pain "off and on" since the 1996 injury.

Claimant left his employment with 1996 employer and began employment with 1998 employer in 1997. At that time claimant was evaluated by a physical therapist prior to beginning work; testing involved lifting weights, at least up to 125 pounds, in various positions and dragging a 143-pound weight. His position description as a floorhand for 1998 employer called for "very heavy" work. His lifting in various positions indicated that he could lift from 60 pounds to 131 pounds which indicated that he was in various percentiles for heavy lifting ranging from 40 to 58. He passed this evaluation and began work for 1998 employer, and worked without incident, he said, until his (date of injury for 1998), incident.

Claimant provided various accounts as to what happened on (date of injury for 1998). His statement of October 26, 1998, merely said that he was getting ready to "run a rod through the hole" and stepped up on the floor, where he felt pain in his back, and then stepped back off the floor and "went to my knees." He said he told his doctor, Dr. D, of his

1996 accident. Claimant also said, "I didn't get hurt because I was doing something at [1998 employer]. I feel it's a reoccurring injury from time I was working at [1996 employer]." Claimant also said, "It's not [1998 employer's] fault."

A statement from GB provided on October 27, 1998, identified GB as Field Supervisor. He said that he took claimant to the doctor. He said that claimant was waiting for him "lying down" in a pickup when he came to the scene. Claimant told him "he was just walking around and the pain hit him." GB also stated that claimant said it was "an old injury" that reoccurred.

Claimant also provided a short written statement which he signed on September 1, 1998, and GB signed on September 9, 1998. It said that he felt pain on (date of injury for 1998), but there was "no incident" that day. (Emphasis as written.) Off and on pain was referred to relative to the prior injury. He added, "I do believe that this pain is caused from that injury since there was no incident on (date of injury for 1998). I do believe the doctor will agree with me."

Claimant testified that on (date of injury for 1998), he and another worker were lifting (rods or a pump--claimant spoke quickly in a clipped fashion causing some lack of understanding in some words) which he said weighed 50 to 100 pounds. He then felt pain in his back as he stepped up on the floor, and he went to his knees. He said another worker helped him up. An undated statement of LR indicates that LR is also a floorhand. He said that he thought claimant was going to pick up something, like a rod, because "we were fixing to run the rods in . . . he was pulling them out . . ." He then said that he turned around and when he turned back claimant was "kneeling on the ground holding his back." He also said he was holding his lower back with both hands. LR picked claimant up but said "he'd go back down to his knees." He added that claimant was "groaning" when he picked him up, but when claimant went back to his knees, LR said, "I just left him there."

Claimant's initial medical record on (date of injury for 1998), also shows varying histories. A nurse's history says claimant complained of pain in his lower back and added, "lifted rod elevator approx. 25#. Denies knowing how injury occurred. Pain started all at once." The doctor's notes (Dr. D) say, "was working standing up at the oil rig and all of a sudden developed sudden pain right lower back location . . . denies any history of trauma or wreck."

Claimant testified that he could work prior to (date of injury for 1998), and now he cannot. He said that he had thought the old injury was recurring; he could not give a particular reason why he now thought he had been injured on (date of injury for 1998), except to say that his condition now is much worse than it was.

Dr. D said in an undated letter to the ombudsman that he thought claimant's back pain was "a continuation of his work related injury of 1996." Dr. C performing a "required medical examination" recited a history of claimant stating he picked up a pump to put it in a

hole and injured his back, falling to his knees. He said that claimant's "current back problems are related to the (date of injury for 1996), injury primarily . . ."

Carrier 2 provided medical records, claimant's statement, and the pre-work evaluation of 1997, to a peer review doctor, Dr. Da, who provided a report in which he related claimant's history as merely "experiencing pain after no incident" in (date of injury for 1998) while at work. He noted the 1996 diagnosis of a strain and said that injury should have healed. He cited the pre-employment evaluation and said that claimant's condition has no connection to the "strain of (date of injury for 1996)." He then said that the current injury could be an aggravation of claimant's underlying degenerative spinal process.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. As fact finder he could believe some of the evidence provided by claimant and not believe other evidence provided by claimant. He could judge claimant's testimony in the context of other evidence of record, including the opinions of both Dr. D and Dr. C. He could also give less weight to Dr. D and Dr. C than he did to Dr. Da, especially in view of the showing that MMI was reached in less than six weeks after the 1996 injury with a zero percent IR, and the evaluation conducted in 1997 which showed that claimant could do heavy work. The evidence sufficiently supports the determination that claimant sustained a compensable injury in 1998 and that the 1996 injury is not a producing cause of the low back symptoms after (date of injury for 1998), and is not a producing cause of disability. Claimant testified that his doctor has taken him off work; even Dr. C said in January 1999 that claimant was not ready to return to work; claimant also said he could not work. The evidence sufficiently supports the determination that claimant has had disability from August 15, 1998, through the date of hearing.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Tommy W. Lueders  
Appeals Judge