APPEAL NO. 990734

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 4, 1999, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that appellant's (claimant) compensable _____, (back) injury is not a producing cause of claimant's spinal stenosis and degenerative disc disease; that claimant had disability "from September 22 through September 27, 1998"; and that the respondent (self-insured employer, also referred to as the carrier) sufficiently contested "compensability of the spinal stenosis at L3-4 due to degenerative disc disease of the thoracic and lumbar spine."

Claimant appeals the adverse findings, expressing disagreement with the self-insured's doctors and emphasizing the medical reports of his doctors who were actually treating him. Claimant makes some allegations which were not in evidence at the CCH and disputes that the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed by the self-insured was sufficient to dispute an injury at L3-4. Claimant requests that we reverse the hearing officer's decision (and explain a portion of the order) and render a decision in his favor. The self-insured responds, urging affirmance.

DECISION

Affirmed as reformed.

Claimant worked in quality control for the self-insured employer for over 23 years. Claimant testified that on _____, as he was walking up some stairs, he stumbled and grabbed the handrail. Claimant went on to testify that at that time he noticed his shoe was untied, that he bent over to tie his shoe and was unable to straighten up. Claimant asserts he injured himself when he stumbled, not when he bent over to tie his shoe. A statement apparently made to the adjuster, computerized medical records and history initially given to doctors make no mention of the stumble. Claimant saw Mr. M, a physician's assistant at the employer's clinic, on _____, was diagnosed with a lumbar strain and returned to work a week later, on August 28, 1995. Carrier had apparently accepted liability for that injury. Claimant continued working to December 1995, when he was diagnosed with a heart condition and, later, colon cancer (not related to this claim). Claimant had heart bypass surgery in February 1996 and then colon cancer surgery in April 1996, followed by chemotherapy and some additional scar tissue removal surgery in June 1997. Claimant returned to work in September 1997. In the meantime, claimant continued to be seen for back complaints by Dr. J at the employer's clinic through February 16, 1996.

Although the dates are vague, claimant apparently continued having back complaints and, in January 1998, began treating with Dr. Mc for back pain. In a report dated March 27, 1998, Dr. Mc refers to the patient as a "hispanic female," suggests the patient's problem may be a pinched nerve and refers claimant to Dr. W. An x-ray performed on March 31, 1998, showed degenerative disc disease T12 to L2 with posterior subluxation at L2-3. An MRI performed on May 9, 1998, indicates severe degenerative disc

disease at T12-L1 and "L1-2." There was moderate "canal stenosis" at the L2-3 level. Dr. W ordered an additional lumbar myelogram on May 12, 1998. In a note dated May 19, 1998, Dr. W commented:

> I reviewed with him the recent findings of his myelogram and post myelogram CT. We did in fact find that he has six lumbar vertebrae and a transitional vertebrae and the findings were those of significant spinal stenosis, particularly at L3-4. I do think that's the cause of his back and leg pains.

Claimant had spinal surgery ("[d]ecompression L3-4 laminectomy") on September 9, 1998, by Dr. W. Claimant has been unable to work because of this spinal surgery.

Dr. S did a "Quick Peer Review," dated June 8, 1998, for the self-insured, in which he recited the history of a low back injury, diagnostic tests, Dr. W's treatment and examination, and opined:

> Therefore, I do not feel that any current complaints would be related to the original injury on _____. The original injury on _____ appeared to be no more than a lumbosacral strain/sprain.
>
> The Employer's First Report of Injury or Illness [TWCC-1] indicated the claimant was walking up the stairway and had stopped to tie his shoe. When he got ready to stand up, he could not move. Clearly, the mechanism of injury was no more than a soft tissue injury which should have resolved within three to six months after the _____ incident.
>
> Any current complaints would be related to his preexisting degenerative disc disease.

Carrier filed a TWCC-21 on June 19, 1998, which had as its reason for denial: "Claimant's original diagnosis was a low back strain, present diagnosis is degenerative disc disease T12 to L2, which is an ordinary disease of life," and attached a copy of Dr. S's peer review report, a portion of which is quoted above.

Subsequently, Dr. M (not the Mr. M, a physician's assistant, who initially saw claimant on August 21, 1996), in a peer review report dated August 27, 1998, after reviewing the history and medical records, stated:

> It is my opinion that the reported injury of _____ was nothing more than a lumbar strain.
>
> The present findings and surgical recommendations are reasonable. However, the problem is one of aging and degeneration and not work related.

* * * *

> The symptoms are consistent with spinal stenosis which would be secondary to progressive degenerative changes . . . .
>
> As stated previously, this claimant sustained no more than a soft tissue injury to the lumbar spine secondary to the _____ incident. Any current complaints would be related to preexisting degenerative changes and not to the soft tissue injury that occurred on _____.

Dr. SM, apparently claimant's current treating doctor, in a "To Whom It May Concern" letter dated January 22, 1999, wrote:

> I have been treating [claimant] for stenosis of the L3-4 of the lumbar spine. In my opinion this condition is a direct result of his injury on _____.

Similarly, Dr. W, in a chart note dated February 11, 1999, commented:

> I reiteratd [sic] how this gentleman was injured. He was injured on the job back in August of 1995 and I think that probably was the precipitating reason that he has ultimately required surgery. He is now able to walk four blocks and takes about 20 minutes which is a significant improvement over his pre-operative status. He is being followed by [Dr. SM] until his fusion is stable.

Regarding disability, the hearing officer comments in the Statement of the Evidence:

> Claimant was off work as a result of his injury of _____ from August 22, 1998 through August 27, 1998. However these six days are insufficient to entitle Claimant to temporary income benefits as benefits do not begin until the 8th day of disability. Claimant was unable to work from September 9, 1998 to the date of hearing on March 4, 1999. However, his disability was not a result of his compensable injury of _____ but rather due to an ordinary disease of life.

We believe the hearing officer meant to say that claimant was off work from August 22, 199<u>5</u> (rather than 1998), through August 27, 199<u>5</u>, which would conform to the evidence and claimant's testimony. The hearing officer goes on to make a finding of fact (Finding of Fact No. 6) and conclusion of law (Conclusion of Law No. 4) that claimant had disability "from September 22, 1998 through September 27, 1998." We reform that finding and conclusion to read "from August 22, 1995 through August 27, 1995," in order to conform to the evidence.

The other appealed findings were:

FINDINGS OF FACT

4. Claimant's degenerative disc disease and spinal stenosis are an ordinary disease of life caused by the aging process.

5. Claimant's degenerative disc disease and spinal stenosis are not directly related to or the natural result of his lumbar strain injury of _____.

* * * *

7. Self-insured Employer filed a TWCC-21 with the Commission [Texas Workers' Compensation Commission] on June 19, 1998, disputing the compensability of Claimant's degenerative disc disease in his spine as an ordinary disease of life.

CONCLUSIONS OF LAW

3. Claimant's compensable _____ injury is not a producing cause of Claimant's spinal stenosis and degenerative disc disease.

4. Claimant had disability resulting from the injury sustained on _____, from September 22, 1998 through September 27, 1998.

5. Self-Insured Employer did not specifically contest compensability for extent of injury to the low back at L3-4. However, self-insured Employer's TWCC-21 was sufficient to contest compensability of the spinal stenosis at L3-4 due to degenerative disc disease of the thoracic and lumbar spine.

Claimant appealed those determinations, arguing that Dr. S "was paid $175.00 to write his letter" and that Dr. M "was paid $250.00 . . . ." First, we will note that there was no evidence of payments to the doctors in the record. Secondly, even if there had been, that would not necessarily be an improper payment, and, lastly, we note that, on the record, claimant was assisted at the CCH by a person who was being paid by claimant's doctors. Consequently, we reject claimant's insinuations as being grounds for a reversal.

On the merits of the appeal, it is true that Dr. SM and Dr. W, both of whom had treated claimant, had expressed an opinion of a causal connection between claimant's August 1995 compensable injury and his present spinal stenosis and degenerative disc disease, while Dr. S and Dr. M, who were peer review doctors who had not examined claimant, said that claimant's spinal stenosis and degenerative disc disease were preexisting conditions. The hearing officer specifically remarks that neither Dr. SM nor Dr. W "addressed how a lumbar strain advanced to spinal stenosis caused by degenerative changes and arthritis." We do note that both Dr. S's and Dr. M's reports were considerably more comprehensive than were the reports of Dr. SM and Dr. W. However, the weighing of the evidence and which to give greater weight is solely a function of the hearing officer. We have many times held 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 as well as the weight and credibility that is to be given 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 Company 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). We find the hearing officer's decision on this issue supported by sufficient evidence.

Regarding the adequacy of the self-insured's TWCC-21 filed June 19, 1998, claimant contends that the hearing officer's finding that the TWCC-21 "is correct" (meaning, is sufficient) is in error and that "if the carrier would have filed a newly discovered TWCC-21 after 8/98 then it would be appropriate but, they did not." We disagree and hold the TWCC-21, together with the attachments (Dr. S's report), is sufficient to dispute the spinal stenosis at all levels. In Texas Workers' Compensation Commission Appeal No. 951174, decided August 28, 1995, and other decisions, the Appeals Panel has stated that a notice of a dispute of compensability must be read as a whole, that magic words are not required, and that the dispute is sufficient if a fair reading can reasonably be understood to set forth the basis for denying a claim. Applying that test, the TWCC-21, with attachments, filed by the self-insured is sufficient to contest the compensability of claimant's spinal stenosis and degenerative disc disease as being an ordinary disease of life. Although the TWCC-21 references levels T12 to L2, and claimant is currently claiming spinal stenosis at L3-4, the hearing officer could read Dr. S's report as pertaining to all levels of the spine. *See* Appeal No. 951174.

Lastly, claimant asks why the hearing officer's order states that the self-insured is ordered to pay benefits "when this hearing officer has denied me medical for life or my _____ injury." Claimant is entitled "to all health care reasonably required by the nature of the [compensable] injury as and when needed." Section 408.021. The phrase claimant references is a standard clause used to ensure that even if the hearing officer's decision on an extent-of-injury issue goes against the claimant, the carrier is to continue to be responsible for lifetime medical benefits for the compensable injury (in this case, the back strain) and not assume that no further benefits need ever be paid.

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:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Elaine M. Chaney
Appeals Judge