APPEAL NO. 990933

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 1999. It is undisputed that the appellant (claimant) sustained a compensable hernia on _____. The hearing officer determined that the claimant did not sustain an injury to his back in the course and scope of his employment on _____; that the first specific notice of a separate back injury being asserted by the claimant was Dr. G note of December 22, 1997; and that the respondent (carrier) timely contested the compensability of the claimed back injury on January 21, 1998. The claimant appealed; urged that the hearing officer's determination that the claimant did not injure his back in the course and scope of his employment on _____, is so against the great weight and preponderance of the evidence as to be manifestly unjust; and contended that a medical report stamped as being received by the carrier on July 25, 1997, alone is enough to place the carrier on notice that the injury to his back is part of the compensable injury. The carrier replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm in part and reverse and remand in part.

The claimant testified that on _____, he was working alone; that he was removing an industrial carpet cleaning machine that weighed about 200 pounds from a van; that the machine was falling to the ground; that he caught it and he and the machine hit the ground at about the same time; that he immediately had pain in his right, lower back that shot to the front; that he completed the shift; that the next day he told someone in the office what had happened; that he worked for several more days; that he went to an industrial clinic used by the employer; that he told the people there about his back and groin pain; that he received therapy for his back and it caused him to become sick in his stomach; that he went to Dr. G; that he told Dr. G and Dr. G's assistant how the incident happened and where he hurt; that Dr. G referred him to a doctor for the hernia surgery; that he had hernia surgery on November 19, 1997, that resulted in reducing the groin pain; and that after the surgery he noticed the back pain more.

Mr. I testified that he is the claimant's supervisor; that it is the employer's practice to have at least two people work together when heavy equipment is to be used; that he does not remember the claimant telling him that he hurt himself lifting; that he remembers the claimant telling him that he hurt his back playing with children at a swimming pool; and that he is not sure when that happened. The claimant testified that he bruised his hip at the swimming pool at the apartment complex where he lives, but that was about two months before the compensable injury. The medical evidence indicates that the claimant has a back injury and is conflicting on whether the injury occurred when the claimant sustained the compensable hernia injury.

The medical report dated July 16, 1997, and stamped as being received by the carrier on July 25, 1997, contains several references to the lumbar spine. They include pain in the right low back shooting to right groin; lumbar quadrant; and experiencing right groin pain secondary to lumbar injury L1, L2, L3 on right. In his statement of the evidence and discussion section of his decision and order, the hearing officer stated that until the December 22, 1997, report by Dr. G, there was nothing in the documentation available to the carrier that would indicate a back injury unrelated to the hernia injuries was being claimed. In Finding of Fact No. 4 the hearing officer found that the first specific notice of a separate back injury being asserted by the claimant was Dr. G's note of December 22, 1997. Written notice to a carrier of an injury is sufficient to start the 60-day period in which a carrier is required to contest the compensability of a claimed injury. *See* Texas Workers' Compensation Commission Appeal No. 94532, decided June 15, 1994, and Texas Workers' Compensation Commission Appeal No. 941418, decided December 5, 1994. There is no requirement that the injury be separate or unrelated to another injury. If the injuries occurred at the same time, they were related. It is unclear what the hearing officer meant by a separate back injury in Finding of Fact No. 4. We reverse the determinations of the hearing officer that the carrier first received written notice of the claimed back injury in the note of Dr. G dated December 22, 1997, and timely contested compensability of the claimed back injury on January 21, 1998, and remand for him to determine if the report dated July 16, 1997, and received by the carrier on July 25, 1997, put the carrier on notice of a work-related back injury. There are other medical records in evidence that reference the claimant's back; however, the record does not indicate that they were received by the carrier.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). In a case such as the one before us, where both parties presented evidence on the disputed issue of whether the claimant's compensable injury included an injury to the lower back, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it 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 could 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). The hearing officer's determination that the compensable injury does not include an injury to the claimant's back is not 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, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We affirm that determination.

We affirm the determination that the claimant did not injure his low back in the course and scope of his employment on _____. We reverse the determinations that Dr. G's December 22, 1997, report was the first written notice the carrier received of a claimed back injury and timely contested the compensability of the claimed back injury and remand for the hearing officer to make determinations not inconsistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge