

APPEAL NO. 991022

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 21, 1999, a contested case hearing (CCH) was held. The issue was stated as:

Is the Claimant's [respondent] herniated disc in the cervical spine a result of the compensable injury of \_\_\_\_\_?

The hearing officer determined that claimant's "herniated disc or disc bulge at C3-C4 is a result of the compensable injury of \_\_\_\_\_."

The appellant (self-insured, also referred to as carrier) appealed a finding that claimant's fall at work "was a producing cause of the current condition of his disc at C3-C4" and the conclusion quoted above, contending that the hearing officer improperly placed the burden on the self-insured that claimant "had an intervening injury" which caused his condition. The self-insured states that claimant "had an intervening injury" which caused his condition. The self-insured contends that claimant fully recovered from his compensable cervical injury. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

DECISION

Affirmed.

Claimant had been employed by a grocery chain (in what capacity is not clear) when, on \_\_\_\_\_, he was apparently on top of stacked cases of soup when the stack "just collapsed" and claimant fell to the floor, striking a forklift as he fell. Claimant testified that he sustained injuries to his left elbow, leg, left shoulder, head and neck. (At issue here is the cervical injury.) Claimant testified that he had immediate headaches and that cervical x-rays were taken at the hospital. After being seen at the hospital, claimant began treating with doctors at the (clinic).

The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_, and the hearing officer found that the compensable injury included the cervical spine. The self-insured asserts that whatever cervical strain or sprain claimant may have had had resolved. A clinic Initial Medical Report (TWCC-61) dated November 26, 1996, notes complaints of headaches and neck pain. The hearing officer notes that the testimony established that claimant "had cervical problems from the beginning of his claim." An MRI of the cervical spine was performed on January 21, 1997. Dr. C, a radiologist, read that report, having an impression of "[m]ild spondylosis and degenerative change, primarily at C3-C4," some mild posterior spurring, but otherwise "unremarkable." Claimant continued having problems, had extensive treatment and testing, principally for the lumbar spine not at issue here. Claimant was seen by Dr. L, apparently an orthopedic surgeon, on behalf of

the self-insured on February 6, 1997. In a report of that date, Dr. L noted the January 1997 MRI but had no specific impressions regarding the cervical complaints. Claimant was also seen by Dr. M, who only addressed claimant's low back condition. Claimant was then seen by Dr. W, a consulting neurosurgeon, who, in a report dated August 24, 1998, assessed a neurological examination of the neck unremarkable but, because of claimant's continued head and neck complaints, ordered another cervical MRI. Claimant had a second MRI of the cervical spine performed on September 14, 1998, which was read by Dr. F, another radiologist, who found a "flexion deformity at C3-4," and "a midline posterior HNP/extrusion [which] . . . is associated with central narrowing with effacement of the anterior subarachnoid space without cord compression or distortion and bilateral foraminal narrowing." Minimal spondylosis at C5-6 was also noted. Subsequently, the September 1998 MRI was read by Dr. W who commented that the MRI "showed a little bulging disc at C3-4" without compression, a little flexion deformity at C3-4, spondylosis with no herniation, and concluded the MRI was normal. Subsequently, both MRIs were read and compared by Dr. T, a radiologist, at the request of the clinic. In a report dated April 15, 1999, Dr. T had the following impression of the January 1997 MRI:

1. Mild reversal of the cervical curvature at C3-4.
2. C3-4 disc degeneration with disc bulging and a posterior disc herniation which extrudes inferiorly and approximates the cervical spinal cord without direct contact or impingement.
3. Mild degenerative disc disease at C6-7.

Regarding the September 1998 MRI, Dr. T had the impression:

1. Mild reversal of the cervical curvature centered at C3-4.
2. C3-4 disc degeneration with disc bulging and a posterior central disc herniation which is [sic] extrudes inferiorly and contacts and slightly impinges the spinal cord.
3. Mild disc degeneration at C6-7.

Dr. T concluded:

**CONCLUSION:** The C3-4 disc degeneration disc bulging and posterior disc herniation extruding inferiorly was present in 1997, but did not appear to impinge the cervical spinal cord. Similar abnormalities at this level were present in 1998; however, the disc herniation appears slightly larger and slightly impinges the cervical spinal cord.

The mild reversal of the cervical curvature at the C3-4 level and mild disc degeneration at C6-7 were abnormalities present in 1997 and 1998 to similar degrees.

Dr. I, claimant's current treating doctor at the clinic, testified at the CCH that claimant's cervical injury was caused by the compensable fall and that claimant's spondylolysis or spondylolisthesis was at a different level than the herniated disc.

The hearing officer, in his Statement of the Evidence, commented:

It appears that there is very little change between the time of the two MRI's, and that the differences in diagnoses are mere differences of opinion in reading the films. Since the Carrier concedes that the cervical spine was part of the original injury, and there is no proof that there was a herniation at C3-C4 prior to the injury, Claimant's present condition, whether it is a herniation or a disc bulge, is due to the compensable injury.

The self-insured appeals the hearing officer's findings, arguing that the hearing officer improperly placed the burden on the self-insured to prove that claimant had some intervening injury or event which caused claimant's condition and that, basically, claimant had a minor cervical injury for which the self-insured accepted liability, that that injury had fully resolved and that claimant had fully recovered from his cervical injury.

First, we will note that since the self-insured had accepted liability for a cervical injury, treatment for that injury would appear to more appropriately be a medical review issue; however, since the issue has been served up as an extent-of-injury question and the parties appear to want this issue addressed through the dispute resolution process, we will address the issue as presented. We agree with the hearing officer that the medical evidence is conflicting whether claimant has a herniated disc or not. The hearing officer found that the "herniated disc or disc bulge" was the result of the compensable injury. We find no error in those findings.

The self-insured argues that the hearing officer improperly placed the burden of proof on the self-insured. We disagree. Our reading of the hearing officer's decision is that claimant's compensable fall caused whatever cervical injury claimant may have, whether it is a strain/sprain, disc bulge or disc herniation. It seems to us that the hearing officer, in his commentary, was merely commenting on the evidence, particularly Dr. T's conclusion, rather than improperly shifting the burden of proof. We do not find that the hearing officer shifted the burden of proof. The self-insured contends that claimant fully recovered from the neck injury due to the fall. A fair inference and reading of the hearing officer's decision would indicate otherwise. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. This applies equally to medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984,

no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Although the the issue at the CCH assumed a herniated disc, the hearing officer is not bound by that assumption. While we do not disagree with the self-insured's proposition that "[p]eople do recover from minor injuries," the hearing officer, as the sole judge of the weight and credibility to be given to the evidence, disagreed with the self-insured's contention that nothing in the medical evidence showed that claimant's "cervical complaint was anything other than an insignificant injury." It is still not determined whether claimant may have a disc herniation which requires surgery. The issue before the hearing officer was whether the cervical condition, whatever it may be, was a result of the compensable injury. The hearing officer decided that it was and that decision is supported by sufficient evidence.

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.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge