

APPEAL NO. 991101

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 April 13, 1999. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability as a result of his compensable injury from November 7, 1998, through the date of the hearing. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The claimant, who is 62 years old, testified that on _____, he was working as a dock worker for (employer), unloading a trailer. He testified that he had been so employed for about eight years. He stated that he lifted a box containing stereo equipment, weighing 45 to 50 pounds, over his head, twisted to the right to put the box on a cart, felt a "pop" in his low back, and fell to the floor of the trailer. A coworker in the trailer next to the claimant heard him fall and called the supervisor over to the trailer. The supervisor called an ambulance and the claimant was transported to the emergency room.

The emergency room records diagnose an acute myofascial lumbar strain and reflect that the claimant had decreased range of motion and muscle spasms. They also contain a history of the claimant's having developed back pain while lifting a 40-pound box at work and twisting with it. The emergency room records state that the claimant could return to modified duty on November 8, 1998, with no lifting over five pounds. The claimant sought follow-up treatment with Dr. H. Dr. H took the claimant off work at his initial appointment on November 11, 1998, and has continued him in an off-work status. In his initial report, Dr. H noted that the "mechanics of the injury are consistent with the injury described." In progress notes of November 16, 1998, Dr. H diagnosed thoracolumbar myofascitis and facet arthrosis, lumbar radiculitis, and a probable herniated disc. On November 19, 1998, the claimant had a lumbar MRI, which revealed a 5 mm broad-based herniation at L4-5 lateralizing to the left in the canal with compression of the thecal sac and probable left L5 nerve root compression and a mild to moderate diffuse annular bulge at L3-4 with mild flattening of the thecal sac. The MRI also demonstrated dehydration of the discs at each level and mild narrowing of the disc space at L3-4. In notes of February 4, 1999, Dr. H noted that the claimant would be referred to Dr. P for a surgical consultation. The claimant testified that his appointment with Dr. P was canceled by the carrier. He stated that his current problems include low back pain, pain and cramping in his left leg/calf, loss of bladder control, and sexual difficulties. He further testified that he had not had prior problems with his low back but has had prior injuries to his neck and upper back. In addition, he acknowledged that in March and April 1998 he was taking pain medications for a lung infection and neck pain, that he takes medication for high blood pressure, anxiety and thyroid trouble, and that he also has arthritis in his right hand. On cross-examination,

the claimant maintained that he had not received treatment for a low back injury before the November 1998 injury and insisted that, to the extent that his family doctor's records reflect previous low back treatment, they are mistaken.

The carrier called Dr. S as a witness at the hearing. Dr. S conducted a review of the claimant's medical records but did not examine him. Dr. S testified that the claimant's lumbar MRI revealed herniation at L4-5 and bulging at L3-4. She maintained that those findings were not unusual findings for someone of the claimant's age, noting that 80% of the population that age would have either bulging or herniation and not all would be symptomatic. Dr. S also stated that the claimant's x-rays and his MRI revealed that he had degenerative disc disease. Dr. S opined that the claimant did not sustain a new injury in the _____, lifting incident; rather, he probably had an exacerbation of an old injury, the degenerative condition. Dr. S stated that there was no physical objective evidence of new damage or harm to the body, noting that he had complaints of back pain both before and after the lifting incident at work.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable 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. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Insurance Association 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. Generally, injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 carrier argues that expert medical evidence of causation is required, without citing any authority for the proposition. We specifically reject the contention that establishing a causal connection between a lifting incident at work and a back injury is a matter outside of common experience such that expert evidence of causation is required. The carrier also contends that the hearing officer's injury determination is against the great weight of the evidence. In so arguing, the carrier maintains that the claimant's credibility was "seriously called into issue" in that he failed to disclose relevant information to the carrier and to his treating doctor. The carrier made the arguments it makes on appeal to the hearing officer. As the fact finder, it was solely the hearing officer's responsibility to determine the significance, if any, of those factors in determining whether the claimant had satisfied his burden of proving an injury. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and she was acting within her province as the fact finder in so doing. Our review of the

record does not demonstrate that the hearing officer's determination that the claimant sustained a compensable injury is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse her determination on appeal. Cain; Pool.

The carrier's challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of that determination, we likewise affirm the determination that the claimant had disability as a result of his compensable injury from November 7, 1998, to April 13, 1999, the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge