APPEAL NO. 991236

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 11, 1999, a hearing was held. She (hearing officer) determined that the respondent (claimant) sustained a compensable injury, aggravation of right hip avascular necrosis, on _____. Appellant (self-insured) asserted that claimant has an ordinary disease of life that was not aggravated by any event at work; comments about the Statement of Evidence and certain findings of fact were made, along with disagreement as to findings of fact that indicate claimant sustained an injury. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant had recently begun a training program with the (DPS) July 22, 1999 to become a state trooper. Upon beginning her training, she stated she had orientation on September 22 and 23, 1997. Otherwise, physical training for an hour or more took place twice a day excluding weekends. She also stated that the morning exercise period began very early, when it was less than full light of day. During a run in the early morning of _____, claimant testified that she stepped in a drainage ditch, stumbling, and felt pain in her right hip and pelvic area. She continued to train and reported her pain the next day. She sought medical care within about a week but kept training until her pain became very bad by October 17, 1997. Claimant testified that when a person is in training such as the rigorous training she was in to become a state trooper, one does not complain if possible; one does not quit but "sucks it up" and keeps going.

Claimant testified that she took part in athletics in high school, including track. Prior to beginning this training, she ran a lot, on some days running 10 miles. In the training in question, she did not run that far, probably no more than five or six miles in two sessions a day, but that she did other exercises which were very jarring, and which are not commonly done, and did a significant number of repetitions of those exercises. She stated that in the preceding June or July 1997 she had a hip strain and did not exercise for about a week.

An MRI was made which showed that claimant has avascular necrosis. Virtually all physicians agree that the avascular necrosis probably originated from treatment with steroids in 1994 and 1995 for a kidney condition.

The question presented for this hearing was basically whether claimant had aggravated the avascular necrosis. The hearing officer found that she did. While there was some medical evidence indicating that nothing in claimant's training with DPS amounted to an aggravation of the avascular necrosis, there was other medical opinion that the stepping into the ditch accelerated the deteriorating condition. There was even some medical opinion that the hips would have had a chance "to heal without the need for surgical management" had it not been for the "strenuous exercise" which "aggravated the

disease" because the femoral heads were in a weakened state. (Words to this effect were used by Dr. E in a letter dated September 17, 1998.)

In contrast to Dr. T said that no injury occurred to the physical structure of claimant's body relative to her training; he also stated that she has an ordinary disease of life. Even Dr. T said, however, that claimant's right hip pain "occurred rather acutely after one run one day on _____."

On the other hand, Dr. P, who examined claimant, said in May 1998, that she has "an injury superimposed on a pre-existing condition." Dr. E also stated in February 1999, that claimant's "stepping in a drainage ditch during a run at the academy would have been the proximate cause of the changes in [claimant's] hip that did necessitate an attempt at core decompression. . . ." Dr. F also examined claimant. In answer to questions from the self-insured, he referred to claimant's avascular necrosis and said she "was made worse because of the natural progression of the avascular necrosis and accelerated by the training with the DPS." He also said that the medical evidence indicated that the condition was aggravated by the training. Finally, he was of the opinion that avascular necrosis is not an ordinary disease of life.

The last opinion referenced from Dr. F about ordinary disease of life is not crucial to an affirmation of the hearing officer's decision because an aggravation injury may be found when an ordinary disease of life is aggravated by an incident at work. *See* Texas Workers' Compensation Commission Appeal No. 961269, decided August 14, 1996, in which a finding that the claimant therein had rheumatoid arthritis was considered not to resolve the issue since an ordinary disease of life may be aggravated by an injury at work; the "injury" at work includes any acceleration of the disease.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She had to determine what medical evidence to credit when that medical evidence was somewhat conflicting (as stated, there was little conflict in regard to claimant's past treatment with steroids for her kidney condition). While a fact finder is generally not remiss to assign more weight to medical opinion or evidence generated at the time of an examination or soon after study results are obtained, the fact finder is not precluded from giving weight to opinions provided after a substantial period of time. Opinion generated some time after the event in this case may also have been given weight because even the note of Dr. T on October 14, 1997, provided a reference point in saying that claimant's right hip pain developed acutely after one run on _____. Whether to give weight to medical opinion provided after the fact, like other issues raised in this case, were matters for the hearing officer to determine.

We agree with the self-insured's point that a finding of fact, such as the one that said three doctors "credibly" state that claimant's underlying condition was aggravated by her work, does not say that the hearing officer found claimant's underlying condition was aggravated by her work. We note that the hearing officer's finding may be considered somewhat more supportive of the decision because she labeled the three doctors' reports as credible. Nevertheless, the hearing officer also found that claimant sustained an injury

in the course and scope of employment, which is sufficiently supported by the evidence, including the medical evidence.

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:

_____
Philip F. O'Neill
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge