APPEAL NO. 991267

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 May 18, 1999. With respect to the issue before him, the hearing officer determined that appellant's (claimant) compensable injury of _____, is not a producing cause of her lumbar stenosis or post-polio syndrome. In her appeal, the claimant asserts error in that determination and asks that we reverse and render a decision in her favor on the extent-of-injury issue. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to her thoracic spine, a compression fracture at T12, on _____. On November 17, 1998, Dr. W examined the claimant as the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Dr. W certified that the claimant had not yet reached maximum medical improvement (MMI). In his narrative report, Dr. W noted that the claimant also had a moderate compressive central disc herniation at L3-4 and spinal stenosis of the lumbosacral spine in addition to thoracic disc disease. Dr. W diagnosed "inability to ambulate secondary to lower extremity weakness, exact etiology difficult to assess." He noted that the claimant had a history of having had polio as a child; however, he opined that "the patient's significant sensory loss in her feet rules against this being totally due to polio." Finally, Dr. W concluded that "[t]he history suggest that the proximate cause of the patient's lower extremity weakness is her compensable injury. Therefore, her impairment should be treated." Dr. B, a doctor who is treating the claimant, stated that the claimant's compressive central disc herniation at L3-4 "could possibly have been caused by the fall which she reported on _____."

Dr. H examined the claimant at the request of the carrier. In a Report of Medical Evaluation (TWCC-69) dated July 17, 1998, Dr. H certified that the claimant reached MMI on that date with an impairment rating (IR) of five percent. Dr. H noted that the claimant had a herniated disc at L3-4 and stated that while it is possible that the claimant's fall herniated her lumbar disc, "it is more likely that the findings on her MRI scan are associated to the degenerative condition and not caused by her injury on _____." The carrier also introduced the report of Dr. JW, who conducted a peer review. Dr. JW opined that neither the lumbar spinal stenosis nor the post-polio syndrome were causally related to the compensable injury. He concluded that the work-related injury "in no way caused the claimant's progressive lower extremity weakness" and that "[t]he onset of post-polio syndrome would be completely unrelated to the incident on _____."

Initially, we will consider the claimant's assertion that the hearing officer was without jurisdiction to consider the issue before him because it actually presented a question of whether medical treatment for the lumbar spine was reasonable and necessary such that it was properly decided by the Commission's Medical Review Division. We cannot agree with

this assertion. In this case, the designated doctor determined that the claimant had not reached MMI, primarily because of the lower extremity weakness which he attributed, in part, to the lumbar spinal stenosis. Thus, the resolution of the issue herein directly impacted the claimant's continuing entitlement to income benefits and the issue was properly resolved in the benefit dispute resolution process.

The claimant also contends that the hearing officer erred in determining that the compensable injury did not extend to the lumbar spine stenosis or the post-polio syndrome. The claimant had the burden to prove the nature and extent of her 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 weight, credibility, relevance, and materiality of the evidence. Section 410.165(a). As the fact finder, it is the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts have been established. We will reverse the hearing officer's extent-of-injury determination only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer determined that the claimant did not sustain her burden of proving a causal connection between her compensable injury and the lumbar stenosis or the post-polio syndrome. It is apparent from a review of the hearing officer's decision that he simply was not persuaded by the claimant's evidence that the work-related injury was a producing cause of the claimed injuries. Rather, the hearing officer chose to credit the evidence discounting a causal connection between the compensable injury and the lumbar stenosis and the post-polio syndrome. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The claimant asserts that the hearing officer erred in requiring medical evidence to prove the causal connection between her injury and the alleged lumbar spinal stenosis, conceding that medical evidence would be required to prove the causal connection between the compensable injury and the post-polio syndrome. It is well-established that generally questions of injury can be established 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). In his decision and order the hearing officer states:

> Claimant's evidence is insufficient to establish that the compensable injury [of] _____ is a producing cause of her claimed lumbar spinal stenosis and post polio syndrome. Other than the designated doctor's report, the other medical evidence does not support Claimant's condition in this regard.

We cannot agree that the cited language demonstrates that the hearing officer improperly required medical evidence of causation in this case. The first sentence of the cited portion of the hearing officer's decision and order is not limited to medical evidence. To the contrary it states that the evidence in general does not establish the causal connection between the lumbar stenosis and the compensable injury. After carefully reviewing the

hearing officer's decision, we are convinced that his commentary about the medical evidence was included to provide an explanation for his decision and does not demonstrate that he applied an incorrect standard by requiring medical evidence of causation in this instance.

Finally, the claimant argues that, because the extent-of-injury issue arose in the context of a dispute of the designated doctor's report, the hearing officer was required to detail in his findings why the designated doctor's report was not entitled to presumptive weight. At the outset, we note that there was no issue as to MMI or IR before the hearing officer; rather, he was faced with an extent-of-injury issue. While the resolution of that issue may also impact upon the dispute of the designated doctor's report, it does not follow that the hearing officer must provide the detailed findings in this case that we have required where the decision is made not to give presumptive weight to a designated doctor's report. The designated doctor's opinion on an extent issue does not have presumptive weight under the 1989 Act. We perceive no error.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge