

APPEAL NO. 991302

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 25, 1999. The single issue before the hearing officer was whether the compensable injury of _____, was a producing cause of the respondent's (claimant) herniated lumbar disc at L2-3. The hearing officer found that it was a producing cause and the appellant (carrier) appeals, urging that the claimant has failed to prove with legally sufficient expert medical evidence the necessary causation between the compensable injury of _____, and the current herniated lumbar disc. No response has been filed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and it will only be summarized here. Not in dispute was the fact that the claimant sustained a compensable back injury on _____, and that he sustained a compensable electrocution-type injury in February 1998. Nor is it disputed that his current back condition involves a herniation at L2-3 as shown in a June 22, 1998, MRI. The evidence shows that the February 1998 injury basically concerned the claimant's shoulder, for which he had surgery. Regarding the _____, injury, there are medical records that show ongoing treatment up through October 1997, and the claimant testified about his back pain that continued on up to and after February 1998. His treatment included spinal injections. An MRI on August 26, 1997, did not show a herniation but did indicate a minimal disc bulging at L3. Claimant also testified that his February 1998 electrocution injury did not affect his back and that he did not fall but sank easily to the ground.

As might be expected, there are a number of medical reports and opinions in the file covering the course of the two injuries. It is the claimant's position that the injury of _____, is a producing cause of the current herniated disc. The carrier asserts that there is no causal relation between the herniated disc and the _____, injury; rather, that it is related to the February 1998 injury or some other cause.

Although claimant's treating doctor, Dr. N, an orthopaedic surgeon, concluded that the claimant reached maximum medical improvement (MMI) for the _____, injury on October 30, 1997; his report states that it is possible that his symptoms could recur related to the injury and that further injections might be necessary. Also in evidence is a report of a designated doctor assessing the August 1997 injury, which finds that the claimant, as of February 18, 1999, was not at MMI. There are later reports in 1998 and 1999 from Dr. N which continue treating the claimant for the low back injury and recommend a surgery evaluation. Dr. N states in his report of August 10, 1998, that he felt the earlier disc bulge

was indicative of an early evolutionary stage of a disc herniation and that he had no reason to feel that the shoulder injury of February 1998 played a significant role in the evolution of the lumbar spine problem and felt that "we can attribute this primarily to the injury that occurred in September [sic] 1997." In a report dated January 7, 1999, Dr. N addresses specifically the relationship of the herniated disc to the _____, injury and states he has tried to be as clear about this as he could. He states:

Basically, my opinion is that he suffered an injury to his back in August of 1997 that resulted in facet joint related pain. He responded favorably to a facet joint injection. This facet joint related pain is a part of a process of degenerative disc disease that ultimately over the subsequent six to nine months and possibly exacerbated by an on the job electrocution injury in February of 1998 led to development of a disc herniation. I think it would be very difficult to argue that the disc herniation at L2-3 is a completely separate problem from that originated in August of 1997 but is more likely the same problem at a different end of the spectrum with a gradually developing and worsening of the problem over a period of several months.

Dr. H reviewed the records on behalf of the carrier and opined with reasonable medical probability that if the claimant received a shock that was strong enough "to knock him on the ground and cause a significant shoulder injury, then he would have also incurred a twisting mechanism to his back." He did not feel there was a causal relationship between the current disc herniation and the injury of _____.

The hearing officer, although giving consideration to the opinion expressed by Dr. H, concluded that the mechanism of the _____, injury leading to the current condition described and medically accepted and opined by Dr. N, together with the testimony of the claimant, established that the compensable injury of _____, was a producing cause of the claimant's herniated lumbar disc at L2-3. We conclude from our review of the evidence that the hearing officer's determination finds sufficient support in the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). The hearing officer resolves conflicts in evidence from expert witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We are not dealing here with expert opinion in an untested or unscientifically reliable area. See, generally, Texas Workers' Compensation Commission Appeal No. 990003, decided February 19, 1999. Rather, we have lengthy and detailed reports from an orthopaedic surgeon who has treated the claimant for a lengthy period of time and who explained his opinion and the mechanism of how the injuries relate: it is not a matter of a "bare" opinion. Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997); Texas Workers' Compensation Commission Appeal No. 990857, decided June 9, 1999. Nor is this a situation where an expert's opinion is being based upon facts that differ materially from the actual facts as shown by the evidence. Burroughs Wellcome Co.

v. Crye, 907 S.W.2d 497 (Tex.1995); Texas Workers' Compensation Commission Appeal No. 990591, decided April 30, 1999. See *also* Texas Workers' Compensation Commission Appeal No. 990453, decided April 14, 1999. Concluding that the decision is supported by sufficient evidence and that there is no legal error, we affirm the decision and order. Texas Workers' Compensation Commission Appeal No. 991117, decided July 8, 1999.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge