

APPEAL NO. 991373

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 7, 1999. The issues at the CCH were whether the respondent's (claimant) compensable injury extended to and included an injury to the thoracic region and pulmonary respiratory problems, and whether the claimant had disability. The hearing officer determined that the claimant suffered an injury to his thoracic spine on _____, but did not suffer an injury in the form of pulmonary respiratory disease. The determination concerning pulmonary respiratory disease has not been appealed. The hearing officer also determined that the claimant had disability starting on _____, continuing as of the date of the CCH. The appellant (carrier) appeals, urging that there is no evidence or, alternatively, insufficient evidence to support the determinations of the hearing officer regarding the injury to the thoracic region and disability and asks that the decision be reversed. No response is on file from the claimant.

DECISION

Affirmed.

Briefly, the claimant, working on an oil rig on _____, was severely struck by a cable from power tongs, knocked to the ground and rendered unconscious. Because of the pain, that evening he went to an emergency room and was subsequently treated for a laceration of the liver. Medical records indicate crush injury to the chest and abdomen. He testified, and is corroborated by witness statements and some references in medical records and a later note from his doctor, Dr. G, that he also complained of back pain but that this part of his complaint was secondary to the liver problem. The back pain was subsequently exacerbated when the claimant performed strength testing at a functional capacity evaluation (FCE) for the injury of _____. A radiology report of the chest, which the hearing officer apparently misconstrued or mistakenly stated to be an MRI, dated March 2, 1998, states in part that "there has been a slight anterior compression injury of one of the thoracic vertebra about the level of T9." The claimant continued to experience pain in his thoracic area. Later medical records state muscle spasms to the back and recommendations for an MRI. An MRI report from February 1999 states the impression as "essentially negative thoracic MRI with scoliotic deformities as described." (The claimant had polio as a child). Claimant stated he cannot perform the work (heavy labor) that he performed at the time of his injury. He also testified that he has not been released to work by his doctor. An FCE in evidence showed work ability at the light work level.

Aside from medical opinion regarding the pulmonary respiratory disease, the carrier offered a November 9, 1998, opinion from Dr. B regarding the back:

[Claimant's] complaints of back pain are not supported by any in-depth investigation including MRI or CT of the thoracic or lumbar spine. However, the converse is also true. That is, there is not sufficient information to

conclude that any reported back pain is unrelated to his accident of February 9, 1998.

Subsequently, in a May 20, 1999, report, Dr. B, after reviewing the MRI, states that it shows only thoracolumbar scoliosis, likely the result of childhood polio. He also states although the MRI is a limited study, it offers no evidence of an injury related to the injury of _____.

The hearing officer finds as fact, and to which the carrier objects, that "[a]n MRI was performed that showed traumatic injury to the T-9 vertebra in March 1998" and that "[claimant] suffered an injury to his thoracic spine on _____." We agree that the hearing officer appears to have mischaracterized the March 1998 radiograph as an MRI. We do not agree, however, that such apparent mischaracterization results in reversible error "[b]ecause the hearing officer obviously appears to base his decision regarding an injury to the thoracic spine on a document that does not exist, or was mis-read." Clearly, both the radiograph report of March 1998 and the MRI of 1999 were in evidence. As stated above, the March 1998 radiograph indicated a "slight anterior compression injury" in the T-9 area, while the later MRI did not indicate a traumatic injury to the thoracic area. Where there is conflict in medical evidence, the fact finding hearing officer resolves such conflict. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It is apparent that the hearing officer gave greater weight to the March 1998 report and found it, together with the claimant's testimony and other medical record entries concerning the back, to be the preponderant weight establishing the thoracic region injury from the _____, accident. Clearly, there was some evidence to support his determination, and while there is evidence to support an inference different from that found by the hearing officer, we have held that this is not a sufficient basis to reverse a fact finding. Salazar, et al. V. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. And, there was evidence as stated above to show that the claimant did not have the ability to obtain or retain employment at wages equivalent to the preinjury wage because of his compensable injury. Section 401.011(16). Only were we to conclude from

our review of all of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to reverse his decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). We do so conclude and thus affirm the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge