APPEAL NO. 991446

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 8, 1999, a hearing was held. He (hearing officer) determined that the respondent's (claimant) compensable low back injury of _____, extended to her L4-5 "bulging/herniated disc." He also determined that the appellant (carrier) timely disputed the possible herniated disc. Carrier asserts that it accepted claimant's "lumbar strain injury" and agrees that this is an extent-of-injury case, but adds that claimant has had gaps in her medical care and did not show medical evidence how a disc injury could "naturally flow" from a soft tissue injury; carrier also states that there was no sole cause issue. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____. The parties stipulated that she sustained a low back injury "originally diagnosed as sprain/strain" (while she was moving large containers of milk in the convenience store in which she worked). Her first medical care was provided by Dr. T beginning the day of the injury and continuing through _____. Dr. T referred to the injury as a strain. She then began seeing Dr. M in January 1993, apparently on referral from Dr. T, who had noted that claimant would see an orthopedist.

On January 29, 1993, Dr. M noted "sciatica type pain" and "radicular pain especially in the right leg." He scheduled an MRI "to rule out an HNP of the L4-5." An MRI was made on February 5, 1993, which showed evidence of "mild disc desiccation" at L4-5 and L5-S1, but "no evidence of a disc herniation." Records from Dr. M continue through March 15, 1994, at which time he found her to be at maximum medical improvement (MMI) with a five percent impairment rating (IR). (His five percent IR is not accompanied by any measurements, but he simply states, "I feel she has a 5% whole body disability as a result of this injury . . . .") None of Dr. M's records used the words "strain" or "sprain" in describing the back, and he did note radicular symptoms in January 1993. Claimant testified that Dr. M had told her she had a disc problem and she described having physical therapy for six months. (We note that a five percent IR for a lumbar injury without range of motion deficits and without neurological limitations is shown by Table 49, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, to be based on "none to minimal degenerative changes.") Claimant also stated that she continued to get medication from Dr. M until moving to (City), Texas, in 1995, indicating some question in her mind as to whether she could get treatment any longer (apparently after MMI).

When she moved to (City) in 1995 because her husband was transferred, she said she first received treatment (prescriptions) from (phonetic spelling) Dr. G, but testified further that when she attempted to get a copy of her records from him, he said there were

no records. After seeing Dr. G for some period of time, she began seeing Dr. H in September 1996. At the initial appointment with claimant, Dr. H stated that her pain is worse while sitting, "which would correspond to a disc disruption." He added that x-rays showed "severe degenerative disc disease."

Claimant stated that she has had low back pain since the injury in late _____. She added that in December 1996, after she began seeing Dr. H, she was driving home one night and struck a "yearling." In doing so, she said she hurt her shoulder for which she had surgery by Dr. H. She testified that she did not hurt her back but that Dr. H had also said she needed surgery to her back; since she did not want back surgery, she also began seeing a chiropractor, Dr. R, in late October 1996 as an alternative to spinal surgery. Claimant found that Dr. R's care did not alleviate her back condition so she began seeing Dr. Ta in June 1998. He obtained another MRI which showed "minimal bulging/protruding disc material posteriorly and to the right at L4-5 which causes mild narrowing of the inferior right neroforamen." The MRI was then said to be "otherwise normal," not "normal" without any abnormalities.

Dr. Ta labeled claimant's problem as a "herniated disc." Dr. Ta did say in October 1998 that claimant has had "daily pain since the injury"; he added that his evaluation of the studies dating from 1993 is that claimant "has not suffered a new and separate injury."

The carrier argued that the collision with the "cow" in December 1996 was the "cut-off point" in regard to claimant's care being related to the compensable injury. Carrier also provided the peer reviews of (Dr. P) dated July 28, 1998, and February 2, 1999, which said there is "no objective evidence" that the _____ injury is causing symptoms approximately six years later. He said that ongoing treatment is not caused by the injury. He basically considered both MRIs to be within normal limits or to show normal findings.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He found that the _____ injury was a producing cause of the claimant's current condition. In so doing, he did not make a finding of fact related to "sole cause"; however, he commented in his Statement of Evidence that the evidence did not establish that the car wreck in 1996 was the sole cause of the claimant's low back condition. This comment was appropriate based on carrier's argument as to the time in which the claimant's care ceased being caused by the _____ injury and based on the absence of medical evidence indicating that claimant sustained a low back injury in that 1996 accident. The hearing officer could consider that claimant had radicular pain in 1993, that her 1993 MRI showed disc dessication and her 1998 MRI showed disc bulging, and conclude that claimant's condition in _____ was basically the same as it is currently except for some worsening. The hearing officer could also note that while carrier states it accepted a lumbar strain, there is no Payment of Compensation or Notice of Refused/ Disputed Claim (TWCC-21) from late _____ or early 1993 in which the carrier states that it accepted only a lumbar strain/sprain. There is also no indication that there has been any Texas Workers' Compensation Commission determination that Dr. T, the only doctor who used the term "strain/sprain," was correct, or any determination that claimant only sustained

a "soft tissue injury," especially in view of claimant's testimony that she underwent six months of physical therapy under Dr. M and had been noted to have radicular pain.

In addition, while carrier argued that claimant had a gap in which there was no treatment during a period beginning in 1994 to a period in 1996, Section 408.021, in providing for medical care "when needed" to address effects "naturally resulting" (not "naturally flowing") from the injury does not impose any condition that such care only will retain its statutory entitlement when used regularly, such as monthly without omission, or yearly without omission. *See* Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998, which also said that Section 408.021 does not limit lifetime medical care to only be available if the compensable injury "gets no worse." The hearing officer may reasonably infer from Section 408.021 that just because the injury worsens or its effects appear to be worse does not mean that there must have been another injury.

The hearing officer's determination that the compensable injury is a producing cause of the "L4-5 bulging/herniated disc" is sufficiently supported by the evidence, including reference to radiculopathy in 1993, MRIs from 1993 and 1998, claimant's testimony of continued pain, the absence of medical evidence of a low back injury in the car wreck of 1996, and the opinion of Dr. Ta that claimant has not had another injury. As fact finder, the hearing officer weighs medical evidence (*see* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997) and could give less weight to the opinion of Dr. P than he did to the opinion of Dr. Ta and the treatment/evaluations shown in other medical records.

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:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge