

APPEAL NO. 991491

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 25, 1999, a contested case hearing (CCH) was held. In response to the issues at the CCH, the hearing officer determined that: (1) the appellant self-insured ("carrier" herein) did not waive the right to contest the compensability of the thoracic spine injury of the claimant (respondent), and (2) the claimant's compensable injury was a producing cause of claimant's thoracic spine injury. Carrier appeals the producing cause determination on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order. The determination regarding carrier waiver was not appealed in this case.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant's _____, compensable injury is a producing cause of her thoracic spine injury. Carrier asserts that because the injury found by the hearing officer was a soft tissue or muscle injury, it cannot be an injury to the thoracic "spine." Carrier contends that, for there to be an injury to the "thoracic spine," there had to be some damage to the spine or discs. Carrier also asserts that there is no evidence of an actual injury to the thoracic area, but only pain, which is not an injury. Carrier asserts that there was an injury to the low back only.

Claimant had the burden to prove by a preponderance of the evidence that the thoracic spine injury was caused by her compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The use of "magic words" by an expert does not in itself establish causation, but the substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995; Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992.

The parties stipulated that claimant sustained a left knee and low back injury on _____. Claimant testified that on _____, she fell on her knee and felt knee and low back pain. She indicated that she later began feeling pain in her mid back, which she told Dr. G, her treating doctor, about. In an October 28, 1998, medical record, Dr. G noted that claimant had back pain radiating into her mid back. In a February 17, 1998, medical record, Dr. H stated that claimant returned with lumbar and mid-back pain and that in the past she had diffuse pain in her "thoracic T12 paravertebral musculature." Dr. H stated that treatment of the thoracic spine was denied and that it had gone untreated. In an April 4, 1999, medical record, Dr. G stated that claimant had been denied treatment and injections at the T12 spinal level because that is not part of the lumbar spine, and that she needs the injections.

The hearing officer determined that: (1) on _____, claimant sustained a compensable injury to her left knee and low back; (2) on _____, claimant sustained a soft tissue injury to the muscles along the lumbar levels of her spine; (3) the injured muscles extended “up about” the L5 vertebral level of the spine up to and including the T12 vertebral level; and (4) claimant’s muscular injury at her T12 vertebral level was caused by the rest of her spinal musculature injury sustained on _____.

The hearing officer considered the evidence and concluded that claimant’s compensable injury was a producing cause of claimant’s thoracic spine injury. Whether this was caused by claimant’s compensable injury was a question of fact for the hearing officer to decide. We will not reverse his determinations because they are not so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Section 410.165(a) provides that the hearing officer, as fact finder, is the sole judge of the weight and credibility to be given the evidence. Regarding whether claimant’s discs were injured or whether she had a soft tissue injury, we note that what treatment is needed for the injury to this spinal level is a question for the Medical Review Division of the Texas Workers’ Compensation Commission. From the evidence in the record, it appears that claimant has not been diagnosed with a thoracic disc injury. The fact that a hearing officer finds that there has been an injury to the “lumbar spine” or the “thoracic spine” does not necessarily mean that there is a disc injury. Even the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, in Table 49, indicate that a soft tissue lesion is considered to be a specific disorder of the “spine.” We perceive no error in the hearing officer’s determinations.

We affirm the hearing officer’s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge