

APPEAL NO. 991492

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 June 15, 1999. With respect to the sole issue before him, the hearing officer determined that the appellant's (claimant) compensable injury is not a producing cause of his spinal stenosis at L3-4. The claimant appeals, urging that his spinal stenosis was caused by the compensable injury of Injury 2; that there were no other incidents which could have caused the stenosis; and that his two previous surgeries did not have any causal relationship with his present back condition. The respondent (carrier) replies that there is sufficient evidence to support the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The claimant sustained a back injury in injury 1 which resulted in a decompressive L4-5 laminectomy. In May 1991, he had a repeat laminectomy and discectomy at L4-5 and L5-S1. The claimant returned to work and sustained a compensable back injury on Injury 2. As a result of the compensable injury, the claimant had a bilateral L4-5 nerve root decompression, a bilateral L4-S1 transverse process and lateral facet fusion, bilateral L4-L5 pedical screws and plates, and left iliac donor graft, on December 4, 1996. Dr. L performed all three surgeries. The claimant testified that he returned to work in 1996 as a vibrator operator driving a truck, until August 1998 when he left employment after informing his employer that his wife had backed over him with a truck. According to the claimant the statement was not true, he gave the excuse because he needed time off work because of his back pain, and he did not want his employer to be aware of his back problems. The claimant subsequently worked for a bottling company. The claimant testified that his back pain gradually increased after the December 4, 1996, surgery. In 1999, Dr. L informed the claimant that his back pain was caused by spinal stenosis and instability at L3-4, and recommended a lumbar decompression, fusion and instrumentation at L3-4.

The claimant asserts that the compensable injury of Injury 2, is a producing cause of his spinal stenosis at L3-4. The claimant states that he has not sustained any other injuries or accidents after Injury 2, that could have caused this condition. In support of his position, the claimant submitted a report from Dr. L which states in pertinent part:

His problem at the L3-4 level is related to his worker's compensation back injury of Injury 2. He required previous surgery with a fusion at L4-5 with instrumentation. He has no problems at that level but, because he required fusion at that level, he has had increased mobility at L3-4 causing the stenosis and the segmental instability at that level, directly related to his injury and his previous surgery at the L4-5 level.

The evidence indicates that as early as August 1995, the claimant was informed by Dr. L that he had spinal stenosis and that his spinal canal was one-half the size of a normal spinal canal. Dr. L's medical records indicate that in December 1998 he attributed the claimant's chronic back pain to severe stenosis at L3-4.

The carrier asserts that the claimant has congenital spinal stenosis, unrelated to the Injury 2, compensable injury. The carrier had the claimant examined by Dr. MU. Dr. MU opined that the claimant has congenital spinal stenosis at L3-4, which is probably unrelated to the claimant's previous fusion, and that there is no evidence of segmental instability at L3-4. The carrier also had the claimant's medical records reviewed by Dr. MO, a radiologist. In a report dated February 2, 1999, Dr. MO states in pertinent part:

The findings that are presently being discussed, as far as revision, have occurred since the postoperative MRI examination of July 20, 1995. Whether this is associated with interval injury or progression of disc disease from the surgery done at the lower levels, is difficult to determine. There does appear to be some degree of congenital central canal stenosis that goes back to the myelogram of February 29, 1988. The claimant's L3-4 congenital central canal stenosis is not related to the Injury 2 injury as the MR[1] postinjury at this level appears very similar to preinjury MR[1].

The claimant had the burden to prove the nature and extent of his 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 his burden of proving a causal connection between his compensable injury and the lumbar stenosis at L3-4. 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 L3-4 spinal stenosis. Rather, the hearing officer chose to credit the carrier's evidence which discounted a causal connection between the compensable injury and the lumbar stenosis. 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 hearing officer's decision and order are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge