APPEAL NO. 991560

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On June 24, 1999, a hearing was held. She (hearing officer) determined that the respondent's (claimant) compensable lifting injury of Injury 2, was a producing cause of claimant's L2-3, L4-5, and L5-S1 disc herniations, but that appellant (carrier) did not waive its right to dispute compensability of the disc herniations. Carrier asserts that the disc herniations preexisted the Injury 2, injury, that no explanation was given as to how a lifting incident could herniate three discs, and that the herniations are either based on a preexistent degenerative condition or result from a slip-and-fall accident of Injury 1. Claimant replied that the determination of compensability should be affirmed but requested that the waiver issue be reversed; claimant's filing was timely insofar as a response is concerned but was not timely in regard to filing her own appeal as to the waiver issue.

DECISION

We affirm.

Claimant worked for (employer). She testified that on Injury 2, she lifted a box (apparently of tomatoes) weighing 36 pounds. The hearing officer accurately states that some medical evidence indicates that claimant reported feeling a pop in her back and pain when she lifted the box on Injury 2. Claimant acknowedged that she had a slip-and-fall accident prior to the Injury 2 injury (a medical report of Dr. S shows the date of the slip and fall to be Injury 1). Dr. S's records show that he treated claimant with injections, including steroid injections, in November 1997 and January 1998. The medical records refer to a visit to an emergency room after the August injury, but no record from that visit(s) is included. Claimant began seeing Dr. G, D.C., in September 1997. He addressed the two incidents by recording that the earlier slip and fall injured claimant's coccyx, while the lifting injury in August caused sacroilliac and lumbar syndromes.

Dr. G referred claimant to Dr. Sh, who noted claimant's history of lifting a box of tomatoes and feeling "something pull in her back." He also referred to the earlier fall by claimant on her buttocks. Without distinguishing between the fall and the lift, Dr. Sh said "this is a clear cut work related injury."

Claimant's current treating doctor is Dr. P, who dated an initial medical report as April 17, 1998. He referred to a "work-related accident" of Injury 2, but did not describe it. He noted claimant's treatment by Dr. S and reviewed an x-ray which showed "an anteriorly displaced coccyx." He did not have the MRI at claimant's first visit. In May 1998, Dr. P said he would refer claimant to a neurologist and an orthopedist. In June 1998, Dr. P referred to claimant's injury as occurring on Injury 2, but said it was a "slip and fall accident." In a short note dated April 29, 1999, Dr. P primarily addressed whether claimant needs surgery and, in doing so, commented that the "anatomical deficits visualized by MRI are due to her work-related injury."

The neurologist Dr. P consulted was Dr. A; he took a history of a low back pop and pain after lifting a heavy box. He also noted that this occurred "post" a slip-and-fall accident. He indicated that an EMG would be done. Dr. Sa is the orthopedist to whom Dr. P referred claimant. He just noted that claimant injured her low back on Injury 2. He found that her herniation was symptomatic and stated that surgery may be needed.

In late April 1998 claimant saw Dr. D who examined her on behalf of the carrier. Dr. D noted some Waddell tests as yielding inappropriate responses. He described her disc condition as degenerative disc disease and said it was preexistent, stating that over half of American adults have "disc bulges" with no symptoms. There was no further description given of the herniations that would indicate how Dr. D knew they were preexistent. Perhaps by using the word "degenerative," a lengthy process of deterioration is implicit. If so, then a question may arise as to whether the May slip and fall (only three months older) could have caused the herniations. Dr. D stated that the lifting of the box did not cause the herniated discs, but he did not address whether that incident could have aggravated the herniations, said to be preexistent. When a designated doctor, Dr. M, examined claimant in July 1998, he agreed with Dr. D as to maximum medical improvement and said, "the MRI findings in the lumbar spine have been determined to be pre-existing by [Dr. D]," but he then went on to say that he could not determine whether "these conditions" were "present before or after the date of injury."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. She accurately noted in her Statement of Evidence that claimant did not seek medical care between the slip and fall in May and the lifting of the box in Injury 2. The record of hearing also shows that claimant received medical care, including injections, after the August injury and an MRI in January (five months later) showed herniated discs. There was no indication that claimant missed work after the slip and fall in Injury 1 and carrier accepted liability for an on-the-job injury on Injury 2. The hearing officer then concluded that the Injury 2, compensable injury was "a" producing cause of the herniated discs. (Emphasis added.)

The hearing officer was presented conflicting medical evidence. As fact finder, she resolves the conflicts in that evidence. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. In addition, the opinion of Dr. P could have been given less weight because of his earlier reference to claimant's slip-and-fall injury; however, he also referred to a work injury on Injury 2, in his initial report in April 1998. With claimant continuing to work after the fall and giving a history that included both events to Dr. G, who she saw before she saw Dr. P, and to Dr. A, who she saw after seeing Dr. P, the hearing officer could give some weight to the opinion of Dr. P that related the disc herniations to the compensable injury, even though he at one time mentioned the slip- and-fall accident. The hearing officer could also consider that the designated doctor did not state that the herniated discs were preexistent. In considering all the evidence in the record, the hearing officer could also consider that there was no study in the record showing herniated discs prior to the compensable injury of Injury 2. Finally, an issue of whether or not a compensable injury is a producing cause of a particular condition or abnormality does not require that the compensable injury be the sole cause of the condition

in question; as such, an injury which aggravates a preexistent condition may result in a determination that the compensable injury is "a producing cause." The determination that the compensable injury was a producing cause of claimant's herniated lumbar discs is sufficiently supported by the evidence.

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).

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Joe Sebesta
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Elaine M. Chaney
Appeals Judge