APPEAL NO. 991620

This appeal is brought 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 April 16, 1999, and June 18, 1999, to resolve the disputed issues in two claims filed by the appellant (claimant). The claimant and the respondent (carrier) stipulated that the claimant sustained a compensable left knee injury on Injury 1. The issues to be resolved by the hearing officer, were:

(1) Does the compensable left knee injury of Injury 1 extend to and include an injury to the low back?

(2) Did the claimant sustain a compensable injury on Injury 2?

(3) Is the carrier relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to section 409.001?

The hearing officer made 50 findings of fact and concluded that the compensable left knee injury sustained on Injury 1, did not extend to include a low back injury; that the claimant did not sustain a compensable injury on Injury 2; and that the carrier is relieved of liability under Section 409.002 due to the claimant's failure, without good cause, to timely notify the employer pursuant to Section 409.001. The claimant appealed 17 of the findings of fact and the three conclusions of law noted in the previous sentence, contending that they are so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust. He also urged that the hearing officer erred in admitting Dispute Resolution Information System (DRIS) records obtained from the Texas Workers' Compensation Commission (Commission) and in considering hearsay in those DRIS reports. He requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor on all issues or, in the alternative, remand to the hearing officer for further consideration. The carrier responded, contended that the hearing officer did not err in admitting and considering the DRIS records, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

The claimant testified and had 13 exhibits admitted into evidence. The carrier called two witnesses concerning the claimed Injury 2, injury and had 13 exhibits admitted into evidence. Many of the 50 findings of fact made by the hearing officer contain information that normally would be included in a statement of the evidence. Generally, they are

supported by the evidence and accurately reflect the evidence presented at the hearing.[1] The claimant testified that he hurt his back when he fell on Injury 1; that he told doctors about the pain in his back; that doctors told him that they were treating only his knee; that he was given pain medication for his knee; and that he did not notice the pain in his back as much because of the pain medication he took for his knee. He also stated that he hurt his back because he used crutches for a while and because of the way he walked after he no longer used the crutches. The claimant stated that he fell going down some stairs on Injury 2; that he injured his arm, shoulder, and back when he fell; that he told Mr. S the next day; and that Mr. S told him that it was not true that he had fallen. Mr. S testified that the claimant did not report a June 1997 injury to him and that, if an injury is reported to him, he would report the injury to Mr. P. Mr. P said that injuries and "near misses" are reported to him and that he did not receive a report of a June 1997 injury of the claimant.

Early medical reports indicate a left knee injury and surgery on the left knee on March 11, 1997. A report dated August 26, 1997, states that the claimant is now complaining of low back pain. A September 10, 1997, report says that electro-physiologic evidence is indicative of minimal left S1 and/or L5 radiculopathy. The designated doctor, in a report dated October 2, 1997, stated that the claimant had not reached maximum medical improvement, that he was unable to tell if the back condition was part of the compensable injury due to the length of time that had passed, and that it was possible that the back condition was due to the limping or falls because of the weakened knee. In a report dated November 14, 1997, Dr. RM said that the low back pain was from the same accident that injured the left knee. A December 16, 1997, MRI report shows a mild focal bulging disc at L4-5. In a report of an initial visit dated December 9, 1998, Dr. AM said that the claimant fell on Injury 2, injuring his right shoulder and lumbar area and that an MRI would be performed. In a follow-up report dated January 27, 1999, Dr. AM indicated that the claimant had severe pain over the right shoulder, pain over the cervical area that did not radiate, and pain over the lumbar area that radiated to the bilateral buttocks and lower extremities. At the request of the carrier, Dr. W examined the medical records of the claimant and, in a report dated December 29, 1997, said that the first mention of back problems was about six months after the injury and that he saw no reason to include the back in the December 1996 injury.

We first address the question of whether the hearing officer abused her discretion in admitting DRIS records obtained by the carrier from the Commission. The claimant contended that the DRIS records were not timely exchanged and that they contain hearsay. The last benefit review conferences (BRC) concerning the two claims were held on February 17, 1999. Letters dated March 5th and 10th distribute two BRC reports and advise that the CCH will be held in the morning and afternoon of April 16, 1999. The attorney representing the carrier stated that the Commission would not accept a request for

[1] A translator was used at the hearing. The claimant used a Spanish word that could be translated to be either ladder or stairs. Considering comments made by both attorneys and the claimant, it appears that it would have been more appropriate for the hearing officer to have used stairs rather than ladder in Findings of Fact Nos. 37 and 40; however, the use of the word ladder did not result in reversible error.

DRIS records until a CCH has been scheduled; that the carrier requested the DRIS records soon after the CCHs were scheduled; that the DRIS records were received on March 25, 1999; and that they were sent to the claimant the next day. The hearing officer stated that she found good cause for not exchanging the DRIS notes no later than 15 days after the BRC and stated that she would consider that the DRIS records contain hearsay when deciding the probative value of the information in them. She did not abuse her discretion in admitting the DRIS notes.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In her Decision and Order the hearing officer noted that the claimant's case rested heavily on his credibility, noted inconsistencies in the evidence concerning the December 1996 injury, and stated that the claimant was not credible concerning the claimed June 1997 injury. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Judy L. Stephens
Appeals Judge