

APPEAL NO. 991703

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 29, 1999, a hearing was held. She (hearing officer) determined that the respondent's (claimant) compensable injury to his right ankle and right knee also included his lumbar spine. Appellant (carrier) asserts that neither claimant's own description of the injury in investigations and reports nor the medical documents of the first two doctors he saw show any complaint about the low back, and therefore claimant has not shown a causal connection between the work incident of _____, and his back condition. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, while working, he testified, he turned and his right knee bumped a shelf, causing his right ankle to turn inward, whereupon as he was falling forward, to keep his head from striking the shelving, he jerked back, injuring his low back. Claimant also said he told all the doctors he saw that he had hurt his back in addition to his ankle and knee; this included Dr. Ph, whom he saw from January into March, and Dr. Ma, whom he saw from March into August 1997 (neither of whom mentioned any back complaint by claimant); he did not say why he did not list his back on his Notice of Claim provided in August 1997 or on his written report to his employer provided on January 22, 1997.

Dr. Ph noted on claimant's second visit on January 22nd that his knee was better; his ankle was not. On March 5, 1997, Dr. Ph ordered an MRI of the ankle and referred claimant to Dr. Ma. Dr. Ma first saw claimant on March 17, 1997. While there is no operative report in the record, Dr. Ma states on April 21, 1997, that he will perform ankle surgery for a ruptured tendon and on May 9, 1997, notes that the incision is healing. Claimant continued to complain of pain and limped. On June 26, 1997, Dr. Ma was concerned that there might be a tarsal tunnel syndrome in the ankle so he referred claimant to Dr. R for a "right leg EMG." On July 14, 1997, Dr. Ma noted that Dr. R and he discussed the results of the EMG; there was no indication of tarsal tunnel syndrome but there were abnormalities of other nerves. Dr. Ma continued by saying, "Dr. R is concerned about the possibility of a lumbar radiculopathy," adding that claimant should have a lumbar MRI. (As stated, none of Dr. Ma's records, including two more visits by claimant after the reference to obtaining a lumbar MRI, show a complaint about the low back from claimant; after Dr. Ma had noted a possibility of a lumbar problem by stating the need for a lumbar MRI, it would not be unreasonable to expect to find Dr. Ma beginning to record claimant's complaints about the low back which, claimant said, Dr. Ma had "not been concerned about.")

Claimant began seeing Dr. K, D.C., on September 3, 1997. Dr. K immediately noted a "lumbar disc syndrome" and "lumbar segmental dysfunction" although his history only stated the bumping of the knee and the turning of the ankle without reference to the jerking back to prevent head injury. On September 23, 1997, Dr. Mt on referral from Dr. K noted

claimant as saying that since the injury, "he has been having increased back pain," adding that claimant does "not recall specifically what he did." Dr. Mt thought that treating claimant's foot would help his back. An MRI was made in November 1998 which showed mild spondylotic bulges, a broad based bulge at L3-4, a bulge or herniation at L4-5, and a facet arthrosis and mild foraminal narrowing at L5-S1.

Dr. K on February 2, 1999, said that claimant had injured his back on _____; he added, "[d]ue to significant gait dysfunction following surgery to his right ankle, his lumbar disc syndrome has been further exacerbated." Dr. K then said in May 1999 that claimant has "severe gait dysfunction following his ankle surgery" and that from this "stress is translated up into his lower lumbar spine."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The fact that a part of an injury is not reported immediately when obtaining medical care may be considered but that fact does not preclude a finding that injury included areas of the body not initially recorded. Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. While the hearing officer found that claimant jerked his body backwards at the time he injured his ankle and knee and found that Dr. K was credible in saying that claimant injured his back on _____, she does not find that claimant injured his back on that date. She does find that Dr. K and other doctors have said that claimant's gait affected his back, but she, as fact finder, did not find that his altered gait injured his back. However, she does conclude that claimant did sustain a compensable injury to his lumbar spine and from that, and the other findings of fact made, we may infer findings of injury to the lumbar spine through claimant's movement at the time of the incident and through an altered gait.

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:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge