APPEAL NO. 991711

Following a contested case hearing held on July 20, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain an injury in the course and scope of employment on _____; that the respondent (carrier) disputed the compensability of the alleged injury of _____, on or before the 60th day after receipt of notice; that claimant did not have disability; and that claimant's average weekly wage is $953.15. Claimant has requested our review of the hearing officer's resolution of the injury issue and asserts, in essence, that his evidence met his burden of proof. The carrier's response contends that the evidence sufficiently supports the hearing officer's determinations.

DECISION

Affirmed.

Claimant testified that on _____ (all dates are in 1999 unless otherwise stated), while employed as a truck driver, he was descending the steps of a loading dock when a person sitting on a step stood up and bumped him, knocking him off balance, and to avoid falling on other persons sitting on the steps, he jumped from the fourth step to the ground, landing mostly on his left foot. Claimant said he knew it was "a bad landing" but did not feel pain, finished up his remaining driving duties in other cities, and went home for a long weekend off. He said that while sitting in his recliner chair that evening, he felt a soreness in his back which gradually increased in intensity; that the next day he sought treatment at an emergency room (ER) because his family doctor, Dr. TW, was out of town; that at the ER, x-rays were taken and he was given a shot and sent home; that he subsequently saw Dr. TW several times and Dr. TW prescribed antibiotics; that his pain increased to the point where he was taken by ambulance to hospital 1 where he was treated and consultations and tests were obtained. Claimant said he was later transferred to hospital 2 and while there was treated by Dr. H, an infectious disease specialist, and his lumbar spine was operated on by Dr. L, a neurosurgeon, for the "cleaning out of an infected disc." Claimant said he was continued on IV antibiotics at home until mid-May and remains on antibiotics by mouth. Asked what he was told by the doctors about the cause of his spinal condition, claimant responded that "they said they didn't really know . . . how this infection started or where it came from."

A March 5th lumbar spine series x-ray report, which reflects claimant's age as 61, states the impression as L5 spondylosis and grade I spondylolisthesis and moderate L3-4 and L4-5 disc narrowing with marked L5-S1 disc degenerative narrowing. The report does not mention any fracture. A March 12th lumbar spine CT scan report states the impression as recurrent disc herniation and spinal stenosis at L4-5 and lumbosacral recurrent disc herniation and spinal stenosis. The report does not mention any fracture. A March 24th MRI report states that the findings are compatible with diskitis involving the L2-3 through L4-5 disks, that there is diffuse osteomyelitis involving the L4 and L5 vertebral bodies, and

that there is extension of the inflammatory process into the paraspinal tissues at the L4 and L5 levels. The report does not mention any fracture.

The March 25th report of Dr. V at hospital 1 reflects that claimant was admitted on March 19th and discharged to the care of Dr. H at hospital 2 on March 25th. The discharge diagnosis was L4-5 osteomyelitis, acute diskitis, and subacute bacterial endocarditis with Streptococcus viridans.

Dr. H's March 25th report, which includes mention of claimant's jumping off the stairs on March 4th, states the impression as subacute bacterial endocarditis secondary to viridans Strep; L4-5 diskitis with adjacent vertebral involvement and epidural/ paraspinous component which likely represents metastatic seeding and which occurs at the site of prior trauma; and history of hypertension.

Dr. L's March 26th operative report reflects that claimant underwent a hemilaminectomy and microdiscectomy at L4 and L5 and that the postoperative diagnosis was L4-5 purulent diskitis.

Dr. B, a specialist in physical medicine and rehabilitation, testified that she reviewed claimant's medical records; that diskitis is an infection of the disc; that the March 4th incident claimant described would not have caused an infection in his spine and bone; and that a back sprain, the pulling of muscle tissue, cannot lead to osteomyelitis, a bone infection. Dr. B further stated that claimant's records contained an echocardiogram report concluding that he had subacute endocarditis. She said that endocarditis could seed the blood stream with septic particles which could migrate to the spine. The carrier also introduced the June 13th report of Dr. W, countersigned by Dr. B, containing similar information and opinions.

In a June 3rd letter "To Whom It May Concern," Dr. TW states that in his opinion, "this patient's entire illness is from the fracture in his back sustained while working for [employer]"; that "no heart disease or infection prior to his fall or after has been unquestionably demonstrated"; that "[h]is fever, hospitalization and disability are all the result of the fracture in his back and subsequent infection"; that he now has "secondary osteomyelitis and diskitis with concomitant vertebral osteomyelitis"; and that he will be permanently and totally disabled for truck driving. Dr. TW concludes that the recipient of his report should "save yourself a lot of trouble" by responding promptly and favorably because, otherwise, he has advised claimant to "seek legal counsel."

Relative to the conclusion that claimant did not sustain an injury in the course and scope of employment on March 4th, the hearing officer found that claimant's discomfort in his lower back and left leg was the result of diskitis, an infection of the vertebral disc, and osteomyelitis, an infection of the spine; and that the source of the infection to claimant's L4-5 disc and to his spine is unknown and no doctor has stated that claimant's landing on his left leg after jumping from the stairs at a loading dock had any effect on the disease process. Even if Dr. TW's June 3rd letter is read to imply a causative connection, the

hearing officer could consider the remainder of the medical evidence, including the lack of evidence of a fracture.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the disputed findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

_____
Judy L. Stephens
Appeals Judge