

APPEAL NO. 991987

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 12, 1999, a hearing was with a hearing officer. He (hearing officer) determined that respondent's (claimant) _____, injury "is a producing cause" of his current medical condition (the issue was framed as whether the current condition is "a result" of the _____ injury); he also found that appellant (carrier) did not show that a _____, incident is the sole cause of disability (the issue had asked whether a new injury is the sole cause of the claimant's current condition). Carrier asserts that the hearing officer erred in finding no injury occurred on _____, adding that claimant had not seen his doctor for six months prior to reporting a _____, injury to his doctor and arguing that claimant's posture (hunched over) after the _____, incident shows that he sustained an injury. Carrier also said that claimant did not show that his _____, injury was "the producing cause" of his current condition. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) in 1997. The parties stipulated that carrier accepted liability for an injury on _____. Carrier represented during the hearing that the injury was a sprain/strain. Claimant only testified that he injured his back in _____ when he turned to pick up a package, but the medical records show that he turned and picked up a box weighing approximately 60 pounds. He indicated that he did not return to work until January 1998 and then he did so with restrictions. Claimant testified that he had previously injured his back in 1989 and had lumbar fusion surgery in 1991. Claimant also said that he continued to be on medication for his back after the 1991 surgery until the _____ injury.

The incident of _____, was described by claimant as occurring in a golf pro shop where he worked. Two other employees were picking up a glove stand which was to be placed on a pole. Claimant said the glove stand was "real thin." The other employees were on each end of the stand and claimant said he was "guiding them onto the pole." Something did not go as planned, and claimant said the weight went toward one employee "and I just pushed it off onto him." Claimant said that he returned to his treating doctor, Dr. K, several weeks after the 1998 incident, adding that he did not have "severe" pain after this 1998 incident.

On July 16, 1998, Dr. K appears to have made his first report after the _____, incident in which claimant had "pushed" the weight of the stand off onto another employee. Dr. K said that claimant had an "exacerbation of pain" which "again" makes him walk "bent over." On October 22, 1998, Dr. K wrote to carrier in reference to a peer review report dated September 22, 1998, by Dr. C. He said that he had not been asked to provide medical records for the review and referred to past inadequate information being provided for such reviews. He said that he agreed that the _____ injury was a lumbar sprain, but

added, "[i]t is certainly probable that this incident has in [sic] far greater affect on this patient's back than a sprain on an otherwise 'lumbar spine healthy' patient." Dr. K also said, in a report dated January 13, 1999, that "exacerbation" means "increase and possibly temporary in a situation meaning the patient had his usual and temporary increase in pain. There is no evidence of a new injury!!!" Then on April 7, 1999, Dr. K wrote to the Texas Workers' Compensation Commission (Commission) saying that claimant "had no injury" in 1998, adding that claimant needs surgery but not because of an "alleged injury" in 1998. (A second opinion report as to spinal surgery is dated April 6, 1999, and is in the record; there is no operative report from 1999 in the record, but claimant testified that he had spinal surgery on June 21, 1999.)

Claimant was seen by a designated doctor, Dr. G, on December 29, 1997, after the May _____ injury. Dr. G stated at that time that claimant's gait was abnormal, citing that claimant was "bent forward and walks very slowly." Since Dr. G certified that maximum medical improvement (MMI) was reached on October 10, 1997, this report shows that claimant was "bent forward" after having reached MMI. Dr. K had also stated in a June 26, 1997, report that claimant walked "hunched over."

In another peer review report, Dr. C said on May 14, 1999, that surgery had not been recommended for claimant after the _____ injury. Dr. C also refers to "multiple occurrences of pain following the 1991 injury" as supportive of his conclusion that there is no "objective evidence" indicating that the "current complaints are due to the _____ compensable event."

The hearing officer is the sole judge of the weight and credibility of the evidence, insofar as the provisions of the 1989 Act and applicable rules of the Commission are correctly applied. As fact finder, the hearing officer could give weight to Dr. K's opinion concerning whether or not the 1998 incident constituted an injury as opposed to a period of pain attributable to a previous injury. He could also consider that Dr. C had pointed out that claimant had "multiple occurrences of pain," which apparently did not constitute injuries, following the earlier 1991 surgery, and conclude that the 1998 event was another such occurrence. (As stated, carrier accepted liability for the _____ incident as an injury.) The hearing officer could also consider that claimant did not see Dr. K for four weeks after the incident of 1998, and Dr. K, at that time, referred to it as an "exacerbation of pain." Similarly, as fact finder, the hearing officer did not have to conclude that an injury occurred in 1998 because claimant had difficulty walking after that event and was "hunched over," especially since claimant had been observed in that same condition after the _____ injury and even after MMI had been reached for the _____ injury. While the hearing officer could consider the length of time in which claimant had not seen his doctor prior to the 1998 incident, he did not have to give significant weight to the lack of medical records just before the 1998 incident.

Finally, carrier points out that the claimant did not show that the _____ injury was "the" producing cause of his current back condition. That may be true, but that was not the issue, that was not what the hearing officer found, and that was not what the hearing officer had to address under the 1989 Act. The hearing officer found that the _____ injury was "a"

producing cause. That finding of fact is sufficiently supported by the evidence; the issue did not require that the hearing officer determine "the" producing cause, and the 1989 Act and relevant rules do not impose that criterion.

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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge