APPEAL NO. 992059

This appeal arises 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 August 20, 1999. The issues involved whether the injury sustained by the respondent, who is the claimant, on _____, was the producing cause of disc protrusions and degenerative changes at L4-5 and L5-S1.

The hearing officer held that the disputed conditions naturally flowed from claimant's compensable trauma injury (that the trauma was the producing cause of the disputed conditions) and thus were part of the compensable injury.

The appellant (carrier) appeals. It argues that degenerative conditions and arthritis are ordinary diseases of life. The carrier also argues that the treating doctor's bare statement that there is a causal relationship between past and current conditions is not probative medical evidence. The carrier argues that the hearing officer erred as a matter of law, and additionally reached a decision against the great weight and preponderance of the evidence. Much of the carrier's argument is based upon its assertion that the only injury sustained by the claimant on _____, was a lumbar strain. The claimant responds that the decision is correct and supported by the record and the medical evidence.

DECISION

Affirmed.

The hearing officer has written an excellent summary of the pertinent evidence, which we will incorporate into this decision. For ease of reading, we will very briefly summarize. The claimant was working as a nurse at (Hospital T) on _____, when she slipped and fell on a wet spot on the floor of the medication room. She fell straight down into the "splits." Claimant was briefly treated in the emergency room, and she did not keep a follow-up appointment there. Significantly, she sought to resolve continuing back pain by seeking chiropractic treatment. No objective scans or tests were performed.

Claimant said she continued treatment for three to four years, and while there would be some resolution of her pain, it never entirely went away. She said that in September 1997, her chiropractor, Dr. B, told her that the carrier would no longer pay for his treatment. This was not contradicted by the carrier at the CCH.

The claimant self-treated until the pain became unbearable. She then undertook treatment in November 1998 from Dr. T. He promptly ordered an MRI, which indicated facet degenerative changes at L4-5 and L5-S1, as well as left-sided disc protrusions. Dr. T testified at the CCH that he believed these protrusions represented small herniations, considering the pain pattern of the claimant on examination (extremity pain consistent with L5 compression) and as recorded in her past medical records, and he believed they had

happened when she fell. He also testified as to how a ligamentous strain could weaken the muscles and how this would have led to the development of herniations. Although the carrier employed doctors to review claimant's medial records to opine on causation, a fair reading of these opinions is that they were based upon what was reported as the initial injury (a strain) in Dr. B's records, and their further opinion that the degenerative condition would not have been "caused" by claimant's fall. The peer review doctors also find significant that there was a "gap" in claimant's treatment between leaving Dr. B's care and seeking treatment by Dr. T. (It does not appear that the peer review doctors considered, or were aware of, nonpayment for treatment by Dr. B as a factor in this.)

Claimant had not missed much work from her accident, and she detailed her duties on her jobs. She emphasized that lifting was not required, and that she could obtain aides to assist when a patient needed to be lifted. Much of what claimant had done entailed paperwork duties. She testified that there had been no occurrence other than her fall that affected her back. Claimant had been a horseback rider prior to her accident, and a runner, but said she had not really done these activities since the accident.

An injury is defined to include not just the immediate damage, but a disease or infection naturally resulting from the damage or harm. Section 401.011(26). The fact that a naturally developing condition could also have occurred outside of employment will not preclude it from being included as part of the compensable injury that was its genesis. We do not agree with the carrier's assertion that Dr. T has merely made a conclusory statement that the accident caused the bulging discs. He fully explained his reasoning and rationale and the mechanism of how the conditions he saw were caused at the time of, or naturally flowed from, the compensable injury. Much of this is recited in the hearing officer's decision. The hearing officer has indicated that Dr. T's opinion had more credibility with him than the opinions of doctors who had not examined the claimant. He could also have believed that the full extent of the claimant's injury had not been objectively explored to the fullest extent in 1994 and 1995, notwithstanding pain that went well beyond the expected recovery time for a mere strain, thus lending credence to Dr. T's assertion that the claimant's injury likely went beyond a strain on _____.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In considering all of the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order of the hearing officer on all points appealed.

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Susan M. Kelley
Appeals Judge

CONCUR:

_____

Robert W. Potts
Appeals Judge

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Gary L. Kilgore
Appeals Judge