

APPEAL NO. 000003

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 was held on November 23, 1999. The appellant (claimant) sustained a compensable low back injury on _____. The issue before the hearing officer was "[d]oes the compensable injury extend to the disc herniation/protrusion at L3-L4, L4-L5, and L5-S1?". He determined that it does not. The claimant appealed, commented on the evidence favorable to his position that his compensable injury extends to those injuries, urged that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that his injury extends to disc herniation/protrusion at L3-4, L4-5, and L5-S1. The respondent (carrier) replied, contended that the claimant had not explained how a back strain/sprain manifested itself as disc herniation three years later, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

It is undisputed that the claimant sustained a compensable low back injury on _____, lifting a heavy, 450-pound air compressor. In a letter to Dr. A dated March 25, 1995, Dr. LM, a neurosurgeon, stated that the claimant injured his back performing heavy lifting; that the next day he could not get out of bed; that his pain started in the back, went into the right buttock, extended into the posterior aspect of the thigh, and may intermittently radiate into the calf; that the pain was aggravated by sneezing, coughing, straining, bending, lifting and twisting and was relieved by lying down; that his, Dr. LM's, impression was right S1 radiculopathy, slightly secondary to a disc herniation; that he will be started on anti-inflammatory and pain medications and physical therapy; and will be referred for epidural steroid injection treatment. In a report dated March 27, 1996, Dr. J said that his impression was an acute lumbar strain. Dr. J continued to treat the claimant and ordered three weeks of chiropractic manipulation. In a report dated April 26, 1996, Dr. M, a chiropractor, stated that the claimant described his pain as dull and achy low back pain with occasional sharp pinching into the flank region; that the symptoms have been constant since onset with varying intensities; that pain medication, anti-inflammatories, and physical therapy had been prescribed; that his right posterior thigh pain had resolved; and that the claimant had been unable to work since the date of the injury. An office note from Dr. J dated May 22, 1996, says that the claimant seemed to be doing well and wanted to return to work, that there was no need for an MRI or epidural steroids at the time, and that his impression was a resolved lumbar strain. In a note dated May 22, 1996, Dr. J stated that the claimant may return to full duty. A Report of Medical Evaluation (TWCC-69) from Dr. J dated May 26, 1996, indicates that the claimant reached maximum medical improvement (MMI) on May 22, 1996, with a zero percent impairment rating (IR).

The claimant's testimony about his medical treatment is generally consistent with those medical records. The claimant testified that he had obtained a job working with computers, that he could not return to the heavy-lifting job he had when he was injured, that he requested Dr. J provide the return-to-work slip so he could take the job, and that he does not remember Dr. J telling him he had reached MMI with a zero percent IR. He explained his activities during the time between the _____ injury and May 1999, stating that he did not do anything that could have injured his back. The claimant stated that during that time his back pain would come and go, that on two occasions his pain was so severe he called the adjuster to see about going to a doctor, that on one occasion the adjuster did not get back to him and he did not follow up because his back got better, and that the other time he was told a lumbar strain heals in three to six months and it was not covered. He testified that he did not work from about the first of February 1999 until May 12, 1999, because he was between jobs; that he worked with computer software; that he did not do anything to hurt his back; that he woke up on Friday, May 28, 1999, with severe back pain; that the pain was in his back and leg like it was in _____; that he had a difficult time walking; that during that week his back was bothering him a little bit; that he had just started a job and wanted to continue to work; that he saw a doctor the next week; that a CAT scan and MRI were performed in 1999; that he received medication and therapy; that the pain comes and goes; and that he is not in pain now and is as functional as he was during the three years before May 1999.

In a report dated June 2, 1999, Dr. J said that he had previously treated the claimant; that he had been doing well over the past several years; that suddenly and unexpectedly, he woke up with severe excruciating back pain; that he reported that the pain was exactly like it was several years ago; that he denied any new injury; that he had started a new job and wanted medication so he could work; and that it was his, Dr. J's, impression that the claimant had acute muscle spasms secondary to a previous back injury. On that same day, Dr. A, a radiologist, reported x-rays revealed a normal lumbar spine. In a report of a CT scan of the lumbar spine dated June 15, 1999, Dr. TM, a radiologist, stated that the claimant had a 4 mm right central focal disc protrusion at L3-4 and dorsocentral disc protrusions of 5-6 mm at L4-5 and L5-S1. A report of an MRI from Dr. F, a radiologist, dated July 27, 1999, contains the following summary of positive findings:

1. L1-2: Mild disc desiccation, no stenosis.
2. L3-4: Minimal spondylosis associated with posterolateral HNP [herniated nucleus pulposus]/protrusion, with right subarticular gutter narrowing.
3. L4-5: Mild spondylosis associated with a central HNP/protrusion (5 mm), bilateral subarticular narrowing.
4. L4-5: Mild bilateral facet arthrosis/synovitis.

5. L5-S1: Large HNP/extrusion (8 mm), causing compression of the S1 nerve within the left subarticular gutter.

In a letter dated August 24, 1999, Dr. J said that he had seen the claimant for a _____ injury; that the claimant had done quite well since March 1996; that he suddenly woke up with severe and excruciating pain in June 1999 without any trauma; that this would tend to shine light on the prior work-related back injury rather than something new; that extruded disc fragments do not suddenly appear in the middle of the night; that they are usually the result of trauma; and that without any trauma here, it had to be from the previous trauma. In a letter dated October 1, 1999, Dr. J provided the following responses to questions from an ombudsman assisting the claimant:

1. The injury that [claimant] sustained back in _____ was to the L5-S1 disc. If you review [Dr. LM's] report from March 25, 1996, he reports that the intervertebral disc height at L5-S1 is decreased. This is the same level where [claimant's] disc extrusion occurred. So, obviously there was something wrong back in 1996. CT scan mentions calcification of the posterior disc annulus at the L5-S1 level. This means that there has been some trauma to this disc and that the body has reacted by producing calcium. This calcium is produced over months and years time and it could not be an acute injury. Your position that this supports the idea that the problem stems back to the _____ injury is correct. At this point in time [claimant's] pain is caused by the disc herniation at L5-S1 pinching on his nerve root.
2. It is not uncommon that patients with disc injuries develop problems years later. A disc injury that would cause annular calcification would predispose that individual to a disc herniation in the future and the disc herniation in the future may suddenly appear years later. Certainly that patient may have intervening symptom free experience.
3. When I treated with [claimant] in 1996 I felt that the disc that was most effected was L5-S1.

In a narrative report dated November 9, 1999, Dr. JM said that he agreed with the October 1999 opinion of Dr. J that in 1996 Dr. LM, a neurosurgeon, felt that the claimant had sustained a left L5-S1 herniation with left S1 radiculopathy; that no studies were actually performed in 1996 since the claimant did quite well with conservative treatment and that it did not appear surgical intervention was required. Dr. JM commented on the 1999 studies and said that the claimant's chronic intermittent back pain episodes would appear to date from the workplace injury in _____.

At the request of the carrier, Dr. P reviewed medical records of the claimant. In a letter dated July 21, 1999, Dr. P said that there was no medical activity between May 22, 1996, and June 2, 1999; that the claimant stated that he woke up with low back pain; that

there was no objective medical evidence documenting the presence of any condition attributable to the _____ injury whose effects would support a three-year gap in symptoms; and that, in his opinion, the current problems are unrelated to the _____ injury and are most likely due to intervening trauma. In a letter dated November 3, 1999, Dr. P responded to three questions from the carrier. He said that a review of the medical records from March through May 1996 did not demonstrate a disc injury at L5-S1; that the lumbar spine disc abnormalities identified in the June 1999 CT scan and the July 1999 MRI are not a natural result of the _____ low back injury; that the most likely cause is "an intercurrent injury associated with the claimant's ongoing activity subsequent to going back to work after the injury of _____"; that the L3-4 and L4-5 disc abnormalities are without clinical significance; and that the claimant experienced right leg pain after the _____ injury and now listed left leg pain as the chief complaint.

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. 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 a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. 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 could 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We note that the claimant did sustain a compensable low back injury and "is entitled to all health care reasonably required by the nature of the injury as and when needed." Section 408.021(a).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge