

APPEAL NO. 000019

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 13, 1999, a hearing was held. The hearing officer determined that appellant's (claimant) compensable hip and right shoulder injury of _____, did not include an injury to the low back, and claimant did not have disability. Claimant states on appeal that he disagrees with the finding that he had a low back injury in 1993; he appears to agree that MRIs of 1993 and 1999 show "little if any difference"; he states that there is sufficient evidence that he injured his low back on _____; and he states that he did sustain disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. He testified that on that date he was descending stairs when he stepped out as if he had taken the last step but he had not; he said he twisted and fell against a wall, but did not fall to the floor. He said that he did not strike the spinal part of his back against the wall. There was no question that claimant missed a step and fell against a wall; an incident report says as much. That report does not say that the low back was injured, and that point was addressed in detail at the hearing. The supervisor, who filled out the report, provided a later statement in November 1999 in which he said that claimant had placed his hand on "his lower torso near his lower back and hip area" in describing his pain and that, he, the supervisor, had interpreted this to be the hip.

The first medical record in evidence after _____, is dated August 11, 1999. On that day claimant saw Dr. M, who commented that he had seen claimant six months before. Dr. M added that claimant was in because "of a recent flare up of pain in his back." Dr. M said, however, that the pain was in the "mid-back" and that there was "no significant complaint of low back pain."

Although claimant's appeal says that he disagrees with a finding of a low back injury in 1993, his testimony addressed an injury at work in 1993 in which he sustained a ruptured disk and then had epidural injections. On cross-examination, claimant said that he has had periodic problems with his back since 1993; he added that those problems were nothing like he now has.

An MRI dated April 13, 1993, showed "mild broad based bulging with mild effacement of anterior thecal sac" at L4-5; it also showed a "disc herniation which compresses the left S1 nerve root" at L5-S1.

Claimant began seeing Dr. B in late August 1999, and Dr. B has stated that claimant should be off work beginning on August 31, 1999. Dr. B provided answers to three

questions proposed. In response to whether the _____, accident is related to claimant's current pain, Dr. B said:

There was a long time interval between onset of pain and injury which makes it less likely, but this is the only injury he can remember.

In response to a question concerning back pain in the future due to the _____, accident, Dr. B said, in part, "[t]his case could well be a flare up from his previous back problems 6 years ago."

Dr. M provided an opinion on November 2, 1999, which again mentioned the "flare up" claimant had on _____, but at this time, Dr. M referred to it as "low back pain" and recited the history of a misstep on stairs. Dr. M characterizes the MRIs of 1999 and 1993 as "more or less the same," but adds that "high intensity zones" at the outer edges of the "herniations" correlate to an aggravation or reinjury. Claimant also saw Dr. D, who said after reviewing the 1999 MRI that the "work related injury on _____, certainly would result in an exacerbation of intrinsic disc pain."

The October 1999 MRI showed "disc dessication L4-5 and L5-S1"; it said, "L4-5 has small disc protrusion centrally not causing stenosis," and "L5-S1 has slightly larger disc protrusion central and left paracentral slightly displacing the left S1 root."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He considered the 1999 findings of an MRI as comparable to 1993 MRI findings and a finding of fact in this regard is sufficiently supported by the evidence. Similarly, his finding of fact that claimant had a low back injury in 1993 is sufficiently supported by the 1993 MRI and claimant's testimony. The hearing officer pointed out in his Statement of Evidence that claimant worked from June 28 to August 30, 1999, at his regular job, and he did not consider the August 11, 1999, visit to Dr. M as being for the low back. This sequence of events could be a significant basis for a determination that a 1999 low back injury was not proved, but both Dr. B and Dr. M also used the word "flare-up" in regard to the _____ accident and Dr. B questioned whether the condition emanated from the 1993 injury. In addition, Dr. D only spoke of an exacerbation of pain. The evidence sufficiently supports all findings of fact. As has been stated in prior opinions, on appeal the evidence is considered under a criterion of whether it sufficiently supports the hearing officer's findings/determination, or, it may be worded as whether the determination is against the great weight and preponderance of the evidence; the hearing officer's decision is not reviewed on a basis of whether there is sufficient evidence to support a determination opposite to that of the hearing officer.

Because claimant had a compensable injury to his hip and shoulder in the _____, accident, the absence of a low back injury does not automatically rule out disability. However, the medical documents in the record addressing off work do not refer to the hip or the shoulder. In addition, claimant's testimony did not indicate that he was

unable to work because of his shoulder or hip. Therefore, the determination that no disability was incurred is sufficiently supported by the evidence.

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:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge