

APPEAL NO. 000109

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 20, 1999. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable low back injury of _____, is not a producing cause of his disc herniation at L4-5, and that the claimant did not have disability as a result of his compensable injury for the period from June 28, 1999, through the date of the hearing. In his appeal, the claimant argues that the hearing officer erred in finding that the compensable injury was not a producing cause of the claimant's herniated disc and that he did not have disability. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____, in the course and scope of his employment while working as a roofer for the employer. The claimant treated with Dr. M for his _____ compensable injury. Dr. M diagnosed an "acute lumbosacral and sacroiliac strain." In progress notes dated September 28, 1998, Dr. M stated that the claimant's condition was "minimally improved." In his October 2, 1998, progress report, Dr. M noted that the claimant's strain was "not really significantly improved with rest, nonsteroidal anti-inflammatories, and muscle relaxers" and he treated the claimant with a steroid injection in the left sacroiliac joint. In progress notes of October 5, 1998, Dr. M stated that the claimant "has done much better" since his steroid injection. Dr. M's assessment was "[e]ssentially complete clinical resolution of acute lumbar and lumbosacral/sacroiliac strain." He released the claimant to return to work without restrictions.

The claimant testified that he returned to work with the employer performing his regular duties after Dr. M released him. He acknowledged that he continued to work full duty with the employer until March 26, 1999, when he was terminated. The claimant testified that although he worked full duty for the employer, he continued to have back problems, which became progressively worse. Specifically, he stated that he had intermittent numbness in his right leg and that he "couldn't bend over real good." The claimant next sought medical treatment for his low back on June 28, 1999, with Dr. B. Dr. B diagnosed a herniated nucleus pulposus with radiculopathy at L4-5 and recommended that the claimant have a lumbar MRI to confirm the diagnosis. On June 30, 1999, the claimant was seen by Dr. S, a doctor in the same clinic as Dr. B. In his report Dr. S stated that the claimant had "severe right lower extremity and back pain." In addition, Dr. S noted that "[i]t is unclear whether this is out of proportion to physical findings." Dr. S referred the claimant for a lumbar MRI which revealed a "[l]arge right paramedian disc herniation at L4-5 which compromises the right neural foramen." In a July 30, 1999, "To

Whom it May Concern" letter, Dr. S stated that the claimant's MRI confirmed herniation at L4-5 that appeared to be causing nerve root compression, that it did not respond well to conservative treatment, and that surgery may, therefore, be required. Dr. S was asked to give an opinion on the relationship of "these symptoms to his previous work injury" and he responded, as follows:

Basically there is no way to determine if this is or is not related to that injury. According to [claimant], there has been no new injury. His symptoms never healed completely, causing intermittent back pain over the past year. The location of the pain is similar. The natural progression of a disc herniation would certainly be consistent with the injury, symptoms and response to treatment that were documented last year.

The carrier introduced a statement from Mr. M, a registered nurse with the employer. In that statement, Mr. M states that he received a telephone call from the claimant on July 1, 1999, stating that he had hurt his back again and that he had hurt it reaching for something. Mr. M further stated that the claimant told him that he could not work and that he wanted "to get those workman's comp checks coming again." The claimant denied that he had such a conversation with Mr. M and further denied that he had sustained an injury to his back after the _____, compensable injury.

The claimant has the burden to prove that his compensable injury was a producing cause of the herniation at L4-5. That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving that the compensable injury was a producing cause of the herniation at L4-5. The hearing officer was acting within his province as the fact finder in deciding to reject the claimant's testimony that he had ongoing back problems after he returned to work in October 1998. The hearing officer was free to consider that the claimant worked full duty from October 1998 to March 1999 when he was terminated and that he did not seek medical treatment after Dr. M released him to return to work without restrictions on October 5, 1998, until June 28, 1999, in resolving the issue of whether the claimant had sustained his burden of proving the causal connection between his compensable injury and the disc

herniation at L4-5. Similarly, the hearing officer was acting within his province in deciding that he was not persuaded by Dr. S's letter that the compensable injury was a producing cause of the claimant's disc herniation. Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant's argument that the hearing officer erred in finding that he did not have disability is premised upon the success of his argument that the hearing officer erred in determining that the claimant's compensable injury is not a producing cause of the disc herniation at L4-5. Given our affirmance of the hearing officer's determination that the claimant did not sustain his burden of proving the causal connection between his compensable injury and his herniated disc at L4-5, we likewise affirm the hearing officer's determination that the claimant did not have disability from June 28, 1999, through the date of the hearing.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge