

APPEAL NO. 000196

Following a contested case hearing held on January 4, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant's (claimant) herniated disc at L5-S1 is not a result of his compensable injury of _____; that claimant has not had disability from April 20, 1999, to the date of the hearing resulting from the injury of _____; and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. M did not become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). Claimant has appealed the extent-of-injury and disability determinations for insufficiency of the evidence to support them. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings and conclusions. The Rule 130.5(e) issue, not having been appealed, has become final. Section 410.169.

DECISION

Affirmed.

The parties stipulated that the carrier accepted liability for the _____, injury to claimant. Claimant testified that on _____, while working on a drill, he stepped on a tube and fell on his buttocks; that he felt pain in his low back and neck; that the following week, the employer's safety supervisor, Ms. H, took him to the (clinic) where he was diagnosed by Dr. M with a pulled muscle and treated for it; that he saw the doctor again and returned to work; and that he continued to perform his regular job of cutting and carrying steel and driving a forklift but was given Ibuprofen by Ms. H who also rubbed a cream on his low back when he complained of pain in his back and leg. Claimant further stated that he stopped working on April 17, 1999, because his pain was too great to continue; that Ms. C, who works in the employer's office, took him to Dr. V; that Dr. V obtained an MRI and told him he had a "bad disc"; that Dr. V referred him to Dr. B, a neurosurgeon, who said he is a candidate for surgery; and that he has seen Dr. P, a chiropractor, who has also indicated he is a surgical candidate. Claimant also stated that Dr. P has not said when he can return to work. Responding to information that he had helped his brother in a recent move, claimant denied the occurrence of any other incident involving his back after _____.

Ms. H testified that she accompanied claimant to the doctor for his treatments three times a week for several weeks; that claimant was discharged from Dr. M's care with no impairment; that she is also an EMT technician and watched claimant bend over and touch his toes five times; that Dr. M explained to claimant that his injury was a lumbar strain; and that she continued working with claimant, who gave no indication of pain getting on and off the forklift and so on, until April 17, 1999, when he came to her complaining of pain. She also said she had given him Ibuprofen to take home and had rubbed cream on his low back but could not recall the dates.

Clinic records of September 28 and October 7 and 26, 1998, reflect the diagnosis as lumbar strain and state that claimant can resume regular duty. Dr. M's Report of Medical Evaluation (TWCC-69) dated November 11, 1998, certifies that claimant reached MMI on October 29, 1998, with an IR of "0%."

Dr. V's April 21, 1999, report states that claimant gave a history of his fall at work on _____, and his continuing to work; that his neck and upper extremities symptoms have resolved; that claimant had minimal residual symptoms from his back until three to four days ago when he experienced significant pain in his back and right buttock radiating into his right thigh; and that claimant denied any subsequent history of injury. Dr. V placed claimant on light duty as of April 21, 1999, and ordered an MRI. Dr. V's note of April 26, 1999, states that the MRI revealed a herniation at L5-S1 which compresses the right S1 nerve root and which corresponds to his current complaints. Dr. V's letter of July 9, 1999, states that, contrary to information claimant provided to him on claimant's initial visit on April 21, 1999, he could find no evidence of previous evaluation for significant low back pain; that claimant's initial complaint after his _____, injury was with regard to his neck and upper extremities, and that cervical spine MRI and EMG/NCS evaluations were performed; that given claimant's initial evaluation for neck and upper back pain and his "0%" IR, "no significant injury of the lumbar spine was at issue"; and that "[i]t would be, in reasonable medical probability, unlikely for a lumbar radiculopathy to be present without any inciting event, if occupationally related."

Claimant had the burden to prove that his _____, injury extended to and included the herniated disc at the L5-S1 level. Texas Workers' Compensation Commission Appeal No. 93725, decided September 28, 1993. Among the findings challenged by claimant is the finding that claimant's herniated disc at L5-S1 did not occur in the incident at work on _____, and is not a result naturally flowing from the compensable injury of that date. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could and obviously did consider the fact that claimant continued to perform his heavy duties at work without medical treatment from October 26, 1998, until seeing Dr. V on April 21, 1999, and the emphasis in the initial medical testing and treatment on the neck and upper extremities. A compensable injury is a prerequisite for disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge