

APPEAL NO. 000322

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 January 19, 2000. The hearing officer determined that the respondent's (claimant) compensable injury extended to an injury to his left hip. The appellant (carrier) appeals, contending that this determination is contrary to the great weight and preponderance of the evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant worked as a truck driver. He testified that on _____, while checking the load on the bed of his truck, he fell on his left side and striking his head. The first treatment he received from Dr. C was to the head and shoulders where the pain was most intense, but he said that his "whole body was sore." Later, pain developed in his lower back. Because he had a prior low back fusion in 1993, he was concerned about a further injury there. The claimant said that by the end of June 1999, he began to limp and notice hip pain radiating down the left side. He then saw Dr. E on referral from Dr. C for his low back pain. Dr. E's report of the claimant's initial visit on July 26, 1999, does not refer to a limp, but notes the claimant was "ambulatory with a reciprocal gait pattern." The claimant said he told Dr. E about his left hip pain and that his left hip seemed loose in its socket, but this is not reflected in his reports. Dr. E testified at the CCH that the claimant had left hip dysplasia, which he considered a congenital condition. He further testified that if the fall on _____, aggravated this condition, the pain would have been due to inflammation which would have been noticeable in a matter of days or weeks from the fall. He believed the left hip could have become symptomatic without trauma and did not think the fall hurt the hip joint. He also recalled a "slight limp" when he saw the claimant for various appointments.

On October 12, 1999, the claimant saw Dr. T, his surgeon for the prior low back injury, for complaints of low back and left leg pain. A lumbar CT scan was normal, but x-rays on November 11, 1999, showed left hip dysplasia. Because, according to the claimant, he had no left hip pain prior to the injury, Dr. T concluded that the fall on _____, caused the current symptoms and aggravated the preexisting condition of the hip. In a letter of December 15, 1999, Dr. E wrote that "I am in agreement with [Dr. T's] assessment that the patient's dysplastic left hip was not a direct result of the injury but is an exacerbation of his preexisting problem."

The claimant had the burden of proving his left hip was injured in the fall on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). We have noted that an employer generally takes an employee as is and that the aggravation of a preexisting, nonwork-related condition can be a compensable injury. Texas Workers' Compensation Commission Appeal No. 941328,

decided November 17, 1994. In this case, the evidence was in conflict. The claimant said that shortly after the fall, he began complaining of low back and hip pain, but this was not generally reflected in the medical records, not even the report of the designated doctor, until Dr. T's letter of November 11, 1999, after an x-ray of the hip was taken. Dr. T concluded that the fall aggravated the congenital hip condition, thus creating a new injury. Dr. E felt otherwise, though he agreed the hip condition or pain was caused by an inflammation. The hearing officer considered this evidence and concluded that the claimant met his burden of proving he also injured his hip on _____. In its appeal, the carrier stresses that Dr. E's opinion should be considered more persuasive and that Dr. T did not provide a justification for his conclusions. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). It was the responsibility of the hearing officer to assign the weight she thought appropriate to the medical, and other, evidence. Applying our standard of review to the record of this case, we find the evidence sufficient to support the determination that the claimant's compensable injury extended the left hip.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge