

APPEAL NO. 000463

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 February 8, 2000. The issues at the CCH were whether the respondent's (claimant) umbilical hernia was a result of a compensable injury sustained on or about _____, and whether the claimant had disability and, if so, for what period. The hearing officer determined that the umbilical hernia was a result of the compensable injury of _____, and that the claimant had disability from February 3, 1998, to March 3, 1998. Appellant (self-insured) appeals, urging that the sole medical opinion of Dr. G relating the hernia to the compensable injury was not supported by a sufficient basis and thus the evidence was insufficient to support the finding that the hernia was a result of the compensable injury of _____. The claimant responds that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The claimant, a fireman, testified that on _____, while engaged in a fire training exercise requiring the movement of heavy mannequins, he felt a pull in his abdomen. He states that he reported the incident to his supervisor and completed an injury report. He did not seek medical attention at the time, did not feel any pain or hernia symptoms from the incident for over two years, and did not miss any work. In late 1997, as he was showering, others called his attention to a bulge in his navel which he states he had not noticed. After a discussion, one of the workers suggested it might be a hernia and that he should consult a doctor and check it out. The claimant subsequently saw Dr. G and was diagnosed with a hernia. The self-insured gave a preauthorization for hernia surgery and an operation was performed. The claimant did not work from February 6 to March 6, 1998.

Dr. G's medical reports and his deposition were introduced into evidence. Dr. G states that he diagnosed the claimant with a hernia on January 6, 1998; that the claimant gave him a history of the incident at work in _____; and that he checked the report of injury at the time which showed "pulled muscle naval area" when training. He states that based on his education, training and experience, the injury is consistent with the onset of an abdominal hernia, and that it is not unusual for months or years to pass without further medical treatment. Based on his examination, the other factors set out above and medical literature applicable to the type of injury, Dr. G stated that based upon reasonable medical probability the hernia was the direct result of the injury of _____. In his deposition he indicates that he bases his opinion on the causal connection on his past medical experience, and notes that while he has not had a patient who did not seek treatment for two and one-half years, he has had patients go several months. He answered that it was possible that something else after _____ caused the hernia, that it was not unusual for a person to remain symptom-free for two years, and indicated he did not have literature

that the hernia was caused by the _____ incident. The carrier did not introduce any additional medical evidence.

The hearing officer apparently found the claimant to be credible in his testimony regarding the _____ injury, being symptom-free until late 1997 when a bulge was called to his attention, and the opinion expressed by Dr. G to connect the hernia to the _____ event. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer could conclude that the hernia was causally related to the _____ incident. Carrier asserts that the opinion of Dr. G was nothing more than a bare medical assertion and not entitled to any weight without being based on anything other than being a doctor. Of course, Dr. G indicates that he accepted the claimant's history (verified by the incident report of _____); that he had experience with and treated the type of injury (hernia) that the claimant had, and that in his experience and from literature he had read, the relationship of the hernia to the incident was not unusual because of the passage of time; and that in reasonable medical probability the hernia was a result of the _____, incident. While the history in a doctor's report does not independently establish a compensable injury, the history, if believed, can be used as a basis for his opinion. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Clearly, this is not a case of "junk science" based on unproven or unaccepted scientific principles; rather, this is the medical opinion of an experienced doctor who has examined the claimant, taken a history that both he and the hearing officer apparently found credible, reviewed an injury report, and considered medical literature in arriving at an opinion he bases on reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 991117, decided July 8, 1999; Texas Workers' Compensation Commission Appeal No. 991071, decided June 30, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 972493, decided January 16, 1998 (Unpublished). We cannot conclude that the medical opinion of Dr. G was entitled to no weight, nor can we conclude that the findings and conclusions of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge