

APPEAL NO. 000586

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 28, 2000. The hearing officer determined that the current low back condition of the respondent (claimant) naturally resulted from the claimant's compensable injury of _____. Appellant self-insured (Acarrier@herein) appeals, contending that the evidence shows that claimant-s current back condition is due to her subsequent _____, fall. Claimant responds that she does not challenge the findings regarding the cause of her current back condition.¹

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant-s Acurrent low back condition naturally resulted from@her _____, compensable injury. Carrier asserts that claimant-s MRI and medical evidence show that claimant had been doing well before she fell in _____ and that her condition substantially changed after this alleged incident. Carrier contends that this shows that claimant-s current condition is due to the alleged new injury.

Claimant had the burden to prove by a preponderance of the evidence that the current condition naturally resulted from the 1995 compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant was not required to prove that the 1995 compensable injury was the sole cause of her current back condition, but only that it was a producing cause of the current condition. See Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997. The use of "magic words" by an expert does not in itself establish causation, and the substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995; Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. Section 408.021 provides that an injured employee "is entitled to all health care reasonably required by the nature of the injury as and when needed." This provision is frequently referred to as the lifetime medical benefits provision. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established.

¹Claimant does challenge a statement in the decision and order regarding whether she sustained any injury at all on _____. However, this was not an issue at the CCH and claimant-s response was not timely as an appeal in any case.

As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The background facts are summarized in the hearing officer's decision and order. Briefly, the parties stipulated that claimant sustained a compensable injury to her low back area on _____, while working for (employer 1). Claimant's diagnosis included sacroiliac joint dysfunction, scarring around the right S1 nerve root, and low back pain. Claimant's treatment included epidural lysis of adhesions and two back surgeries.

Claimant said she subsequently began working for (employer 2) in June 1998 and that she sustained another injury on _____, in employer 2's parking lot when she fell while leaning into her car. She testified that she was treated in the emergency room and emergency room records show that claimant had contusions to her head and upper back and that she reported that she also hit her low back. Dr. J, who treated claimant for her 1995 back injury, stated that she noticed that claimant had bruises on her scalp after this alleged incident in _____ and that the primary concern had been claimant's head.

Claimant's medical records indicate that, both before and after her alleged new injury, claimant's pain complaints varied greatly and that she had days where she felt severe pain and days when she felt much better. In a July 31, 1998, report, Dr. J stated that claimant's back pain continues, that she has a long history of back pain, and that there are no real changes in her back pain. Dr. J later stated, however, that there were significant changes between MRIs performed before and after the alleged _____ incident. In a September 1998 report, Dr. P stated that he reviewed the MRI report taken after the alleged _____, incident and that claimant had a degenerative disc at L5-S1" and that her symptoms were worse. In a September 1999 report, Dr. M stated that she reviewed claimant's medical records and that she believed that claimant's current symptoms are related to her old injury dated on _____, and that the new injury caused headaches, and possibly just a minor lumbar sprain, but her overall symptoms are related to her initial injury of _____.

The hearing officer considered all the medical evidence and determined that claimant's current low back condition naturally flowed from the 1995 injury and that claimant did not injure or aggravate her low back on _____. The hearing officer expressed doubt whether an incident occurred on _____. The hearing officer is the sole judge of the weight and credibility to be given to the evidence, including medical evidence. See Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984 no writ). Whether a carrier may be relieved of liability for an aggravation and/or complications of the original compensable injury due to a subsequent event depends on whether the carrier can prove that the subsequent incident is the sole cause of the claimant's current condition. The hearing officer considered carrier's assertions but

determined that claimant's current condition stemmed from a natural and direct flow of anatomical events and a deterioration of the 1995 injury. The hearing officer was entitled to believe or disbelieve any part of the evidence or testimony in this case. The hearing officer's determinations are supported by the medical evidence from Dr. M. The hearing officer determined that claimant did not sustain a new injury to her back on _____. We have reviewed the evidence and carrier's assertions and we conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge