

APPEAL NO. 000719

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 March 13, 2000. The hearing officer determined that the compensable injury is a producing cause of the respondent=s (claimant) lower back strain/lumbar syndrome after March 1999; that the claimant had disability resulting from the injury sustained on _____, after April 19, 1999, through the date of the CCH; and that the appellant (carrier) did not waive the right to contest the compensability of the claimant=s lower back strain/lumbar syndrome based on an intervening injury by not contesting compensability within 60 days of being notified of the intervening injury. The carrier appeals, asserting that the hearing officer erred in determining that the compensable injury on _____, is a producing cause of the claimant=s lower back strain/lumbar syndrome after March 1999, and erred in finding that the claimant had disability from April 19, 1999, through the date of the CCH. The claimant replies that he agrees with the hearing officer=s decision. The waiver issue has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant sustained a compensable injury to his lower back on _____, when he lifted a bundle of coveralls. The claimant sought emergency medical treatment, missed one and one-half weeks of work, and then returned to his regular job duties. On January 20, 1999, the claimant sought medical treatment with Dr. B. Dr. B assessed lower back pain, prescribed medication, and recommended an MRI. Dr. B treated the claimant on a monthly basis and the claimant received treatment at a pain management clinic. According to the claimant, he was in constant back pain which radiated down his right leg. The claimant testified that on March 11, 1999, he tripped and fell off his porch at home, but the only injury he sustained was a broken rib. The claimant missed approximately seven days from work as a result of the injury. The claimant testified that on April 16, 1999, as he was getting out of bed, he suffered severe back pain, which increased from a level of four to a level of eight. The claimant did not receive medical treatment until his next regularly scheduled appointment with Dr. B on May 10, 1999; however, the pain management clinic contacted Dr. B, who prescribed medication and issued an off-work slip on April 19, 1999.

The emergency medical records from March 11, 1999, indicate that the claimant only complained of right rib cage pain, and that he was diagnosed with a rib fracture. The medical records of Dr. B on May 10, 1999, and thereafter state that the claimant had lower back pain and pain radiating down the right leg. A lumbar MRI performed on June 30, 1999, revealed degenerative changes with disc bulges and no herniations. The claimant testified that in August 1999, he changed treating doctors. The carrier had the claimant examined by Dr. F on September 13, 1999, who diagnosed lumbar syndrome. Dr. F=s report refers to the April 16, 1999, incident and states that the claimant felt excruciating low back pain with pain going

down his right leg. The designated doctor, Dr. H, diagnosed the claimant with acute and chronic right sacroiliitis. Dr. H states that the claimant related that the incident of April 16, 1999, caused significant increase in right low back and right leg pain, and that prior to that, he had not had any significant right leg pain or numbness radiating down his right leg.

The claimant had the burden to prove that the compensable injury he sustained on _____, is a producing cause of his lower back strain/lumbar syndrome after March 1999. There may be more than one producing cause. Texas Workers' Compensation Commission Appeal No. 971839, decided October 23, 1997. The burden was on the carrier to prove that claimant's diagnosed lower back strain/lumbar syndrome was solely caused by intervening injuries in March and April 1999 if it desired to raise that defense. Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996.

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. 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 carrier argues that the claimant sustained a lumbar strain on _____, which had resolved by March 1999, and that the incidents on March 11, 1999, and April 16, 1999, are the cause of his current back problems. The hearing officer found that the incident of March 1999 had no effect on the claimant's lower back; that the incident of April 16, 1999, exacerbated the claimant's preexisting compensable injury; and that the intervening incidents of March and April 1999 were not the sole cause of the claimant's low back problems manifested after March 1999. In so determining, the hearing officer states that the evidence was sufficient to link the claimant's compensable injury and his symptoms after April 1999. The claimant's testimony regarding continuing back problems and right leg radiculopathy, and no differing diagnosis after the March and April 1999 incidents, provide evidence supporting the hearing officer's decision.

Disability is not necessarily a continuing status, but an injured worker may go in and out of disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. We have also held that the compensable injury need only be a producing cause of the inability to earn the preinjury wage not the only cause. Texas Workers' Compensation Commission Appeal No. 931117, decided January 21, 1994. Whether disability exists or, in this case, recurred, was a question of fact for the hearing officer to decide. Appeal No. 93953, *supra*. The claimant testified that he was unable to work as a result of the compensable injury from April 19, 1999, through the date of the hearing. We find the evidence sufficient to support the hearing officer's determination that the claimant had disability from April 19, 1999, through the date of the hearing.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge