APPEAL NO. 000767

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 15, 2000. The issues were:

1. Is the Claimant=s [appellant] current lumbar and cervical condition due to the _____ injury or is the sole cause of his current lumbar and cervical condition a new injury?

2. Did the Claimant sustain disability after May 12, 1999?

With regard to those issues, the hearing officer determined that claimant=s "current lumbar and cervical difficulties are the result of degenerative conditions which were not caused or aggravated by the compensable injury," that claimant had not sustained a new injury on or about _____, and that claimant did not have disability after May 12, 1999.

Claimant appealed, contending that the hearing officer=s determinations "are contrary to the medical records" (*i.e.,* against the great weight and preponderance of the evidence). Claimant summarizes various medical records of his doctor and other doctors which did not assess "MMI [maximum medical improvement] until October 11, 1999." Claimant requests that we reverse the hearing officer=s decision and render a decision in his favor. Respondent (carrier) references a prior CCH involving this claimant and this injury and urges affirmance.

DECISION

Affirmed.

The parties and the hearing officer make reference to a prior CCH on May 5, 1999, involving this claimant and the _____, injury. The hearing officer determined in that case that claimant had sustained a compensable ("back and neck strain") injury and had disability from September 28 through October 5, 1998. The hearing officer=s decision and order is in evidence and claimant appealed that decision which resulted in Texas Workers= Compensation Commission Appeal No. 991269, decided July 23, 1999 (Unpublished). Appeal No. 991269, however, was not considered on its merits as the appeal was untimely.

Claimant sustained his compensable neck and low back injury moving or "skidding" a heavy piece of equipment in a storeroom. The hearing officer, in the May 5, 1999, CCH determined that claimant had "sustained a minor injury" which had resolved by October 5, 1998. In this case, claimant contends that only the initial emergency room records were considered in the prior case and that more extensive records from Dr. L, claimant=s treating doctor; Dr. C, carrier=s independent medical examination doctor; and Dr. F, apparently the designated doctor, are now available.

Dr. L, in a report dated October 5, 1998, recites the history and results of his examination, has an impression of "[c]ervical and lumbar radicular complaints," prescribes medication and takes claimant off work. Subsequent reports and notes continue to keep claimant off work. An October 20, 1998, report notes "[o]ngoing spinal pain complaints" and orders cervical and lumbar MRIs which were performed on October 29, 1998. Dr. L, in a report dated November 4, 1998, after reviewing the MRI results, has an impression of "[d]iffuse degenerative disease throughout the neck and low back. He has some evidence of lumbar stenosis." Dr. L also found that claimant "does have some cervical foraminal stenosis on the left at C6-7 and C7-T1." Dr. L suggested facet injections or cervical epidural injections. Claimant testified that he had some injections which have given him temporary relief. A note dated November 10, 1998, notes claimant=s injuries are being questioned by carrier and Dr. L states that he Dr. L has "documented that [claimant=s] difficulties came on as a result of a work related injury." A November 20, 1998, report notes ongoing "spinal pain complaints" and that claimant "has multiple disc bulges and stenosis as a result of bony tightness" which "likely is the etiology of much of his pain." Several of the reports comment on claimant=s problems in obtaining care from the carrier.

Dr. C=s report of October 21, 1999, as well as Dr. L=s _____, report make reference to a lawn mowing incident which apparently occurred in October 1999. Carrier contends that this was a new injury which is the cause of claimant=s problems. The hearing officer specifically found that claimant had not sustained a new injury in October/ November 1999 and that determination has not been appealed and will not be addressed further. Dr. C stated that it was his impression that claimant "has some cervical and lumbar strain, superimposed upon some arthritic changes . . . ." Dr. F, in his report of January 15, 2000, notes the MRI findings "of significant degenerative changes" and has a clinical impression of:

1. Mechanical low back pain Secondary to significant degenerative changes.

2. Degenerative cervical spine.

Although MMI and impairment rating (IR) are not at issue, Dr. F certified MMI on October 11, 1999, with a 14% IR.

The hearing officer, in his discussion, references the prior CCH, comments that Dr. L=s reports do "not persuasively indicate a different conclusion from that reached in the prior hearing" and concluded:

> There was no question in the prior hearing, and none here, that the Clamant=s back condition keeps him from performing the type of heavy work he was previously doing. The operative conclusion in that hearing, as in this one, is that the Claimant=s condition is the result of degenerative changes and not of the compensable incident of _____ . . . . The above discussion should make it clear, however, that the Claimant=s current back condition, according to the

evidence presented here, can be reasonably attributed only to degenerative conditions as revealed in the objective testing; there is no persuasive medical evidence showing how the compensable incident here hastened, worsened, or otherwise aggravated or caused those conditions.

Claimant=s appeal emphasizes Dr. L=s "off work" notations and slips, which are undisputed; Dr. C=s report; and Dr. F=s assessment of an October 11, 1999, MMI date. The hearing officer found that claimant has been unable to obtain and retain employment at his preinjury wage but found the cause to be claimant=s degenerative disc disease rather than the compensable injury.

We have frequently noted that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer=s determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge