

APPEAL NO. 001056

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 13, 2000. The hearing officer concluded that the appellant's (claimant) compensable injury of _____, does not include the low back. The claimant challenges for evidentiary insufficiency not only this conclusion but also the findings that he did not injure his low back on _____, and that his low back injury was not caused by the medical care he received for his compensable knee injury. The respondent's (carrier) response urges the sufficiency of the evidence to support the decision.

DECISION

Affirmed.

The claimant, a dock worker for (employer), testified that on _____, a Thursday, he drove a forklift onto a trailer to unload a pallet and that as he backed the forklift out of the trailer and onto the steel plate connecting the trailer to the dock, a driver pulled the tractor and trailer forward and the forklift dropped straight down about four feet to the ground. The claimant said he had his seat belt on and twisted his left knee getting off the forklift in a hurry; that he also struck his head and elbow but that his left knee pain was paramount; that he was taken to a hospital emergency room where he was seen and discharged that day; and that the next day he saw a company doctor who advised him he had a sprained knee and who prescribed therapy and returned him to work at light duty. He said that he worked for three weeks; that he underwent an extensive course of therapy from Ms. S, an occupational therapist; and that Dr. S, the first doctor he saw, referred him to Dr. H, who performed arthroscopic surgery on his left knee on October 26, 1999.

The claimant, who indicated that his bump on the head and sore elbow were "no big deal" and that they resolved, stated that the carrier accepted his knee injury but contested his claimed low back injury. He insisted that he repeatedly told not only his coworkers but also all of his doctors at each visit and Ms. S about having pain in his left hip area which radiated down into this left leg to the big toe and he could not account for the failure of the records of the doctors to reflect his complaints of low back pain. The claimant conceded that after the benefit review conference he obtained statements from various coworkers, including his union steward, who also testified, about his complaints of back pain at work after the accident.

Ms. S testified that although she was treating the claimant's left knee injury, she found the claimant to have limitations in his lumbar spine range of motion. She also discussed the musculature and ligamental relationships between the injured knee and the claimant's sacrum offset. The pain drawings in Ms. S's records show only the left knee. Ms. S's record of "11/15/99" states that the claimant reported that his left lower extremity feels "tight" and that his low back is "out." Her record of "12-7-99" states that the claimant said his right hip is now hurting and that the pain in his low back has spread upwards.

The claimant introduced an Employee's Request to Change Treating Doctors (TWCC-53), which he signed on December 30, 1999, reflecting that his request to change doctors from Dr. H to Dr. F, a chiropractor, was approved. The claimant gave as the reason for this change that Dr. H could not help him with his back and leg pain. Dr. F's records do not contain an opinion that the claimant's back condition was caused by the accident of _____.

Dr. A, an orthopedic surgeon who examined the claimant for the carrier, reported on February 17, 2000, that the claimant explained the delay in the appearance of back complaints in his medical records by stating that the pain in his knee distracted him from noticing that his back was giving him problems. Dr. A further stated that the claimant himself notes that his back pain only began after he started rehabilitation from his knee complaints; that rehabilitation from his knee complaints may have aggravated a preexisting degenerative disc disease that is causing some of his back and left leg pain; and that he, Dr. A, does "not feel that the on-the-job injury per se started his back complaints."

While common sense would seem to suggest that sitting on the seat of a forklift which falls four feet to the ground would certainly jar one's spinal column, the Appeals Panel cannot substitute its judgment for that of the hearing officer, notwithstanding that another fact finder may well have drawn different inferences from the evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We cannot say the disputed factual findings are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider, as he obviously did, the lack of mention of low back complaints, as such, in the records of Dr. S and Dr. H introduced by the claimant; that Ms. S's records had to do with some sacral offset and muscles affecting the claimant's injured knee; and the opinion of Dr. A.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge