APPEAL NO. 001070

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 April 13, 2000. The issue reported as unresolved at the benefit review conference (BRC) is "[w]as the _____ compensable injury a producing cause of the Claimant's [respondent] scar in the left lateral recess at L4-L5?" The hearing officer proposed that the issue be stated as "[w]as the _____, compensable injury a producing cause of the Claimant's current low back problems?" The appellant (carrier) and the claimant agreed to the issue as stated by the hearing officer. The hearing officer determined that the compensable injury of _____, is a producing cause of the claimant's current low back problems. The carrier appealed, contended that the hearing officer erred in admitting a letter from Dr. D, argued that the hearing officer erred in not making findings of fact requested by it, urged that the great weight and preponderance of the evidence is against the decision of the hearing, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. In the alternative, the carrier requested that the case be remanded for the hearing officer to make additional findings of fact. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

We first address the carrier's contention that the hearing officer erred in admitting the report of Dr. D, dated April 6, 2000. The date of the compensable injury is _____. A BRC was held on February 17, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) provides that parties shall exchange documents no later than 15 days after the BRC; that thereafter parties shall exchange additional documents as they become available; that parties shall bring all documentary evidence not previously exchanged to the CCH; and the hearing officer shall make a determination whether good cause exists for a party not having previously exchanged such documents. The attorney representing the claimant stated that it takes time to get an appointment with an orthopaedic surgeon; that two previous appointments had been canceled; that he got the claimant to an orthopaedic surgeon as soon as he could; that the letter of Dr. D was transmitted by facsimile to him and received by him on April 11, 2000; that he immediately transmitted a copy by facsimile to the attorney representing the carrier; and that he would not oppose a continuance to permit the carrier additional time to respond to the letter of Dr. D. The attorney representing the carrier stated that it did not dispute that the claimant used due diligence after the report was received, but that due diligence was not used in obtaining the report. The hearing officer said that he accepted the representations of the attorney representing the claimant and found good cause for admitting the letter of Dr. D. The hearing officer gave the carrier the opportunity to request a continuance and the attorney representing the carrier stated that he would rely on his objection and not request a continuance. Evidentiary rulings by the hearing officer on

documents which are admitted or not admitted are generally viewed as being discretionary and will be reversed only if there is an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. In determining whether there was an abuse of discretion, the Appeals Panel looks to see if the hearing officer acted without reference to any guiding rules or principles. Appeal No. 941414. The hearing officer did not abuse his discretion in admitting the letter of Dr. D.

The Decision and Order of the hearing officer contains a thorough, three-page statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified that he sustained a nonwork-related low back injury in a motor vehicle accident in March 1990; that he had surgery; that he returned to work in February 1994; and that he worked without any back problems until _____. He said that on that day he ran while performing duties as a security guard and had sharp pain in his left heel, that the pain radiated up into his calf, that the next day the pain radiated into his thigh, that the pain later radiated into his buttocks, and that he did not have lower back pain until a couple of days after the accident. It is undisputed that the claimant has low back problems and that on July 13, 1999, the Texas Workers' Compensation Commission approved spinal surgery related to a compensable injury. The claimant contended that on _____, he sustained a new low back injury or aggravated a preexisting low back condition that resulted in a new injury. The carrier contended that the claimant did not sustain a new injury on _____. Each party introduced medical evidence to support its position. The hearing officer found the claimant's evidence to be more persuasive.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). The Appeals Panel has written numerous decisions concerning causation, aggravation, and sole cause. In Texas Workers' Compensation Commission Appeal No. 960622, decided May 13, 1996, the Appeals Panel held that an aggravation of a noncompensable back injury may result in a compensable injury. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The determination of the hearing officer that the compensable injury sustained on _____, is a producing cause of the claimant's current low back

problems is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The carrier contended that the hearing officer erred in not making findings of fact concerning the claimant's scar tissue and degenerative condition. As noted earlier in this decision, both parties agreed to the rewording of the unresolved issue. The hearing officer resolved that issue. The hearing officer did not err in applying the law concerning aggravation of a preexisting condition. The carrier did not request that the issue of sole cause, on which it would have borne the burden of proof, be added. The hearing officer did not err in not making additional findings of fact.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge