APPEAL NO. 001260

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 May 12, 2000. With respect to the issues before him, the hearing officer determined that the respondent/cross-appellant's (claimant) lower back, right knee, and hip conditions are not a result of the compensable injury sustained on _____; that the claimant reached maximum medical improvement (MMI) on July 8, 1998; and that her impairment rating (IR) is zero percent. In her appeal, the claimant asserts that the hearing officer's determination that her compensable injury does not include her low back, right knee and hip is against the great weight of the evidence. In addition, she argues that the hearing officer erred in giving presumptive weight to the designated doctor's MMI date and zero percent IR. Specifically, she maintains that she has not yet reached MMI and that the zero percent IR is "very unfair" because her condition has gotten progressively worse. In its response to the claimant's appeal, the appellant/cross-respondent (self-insured) urges affirmance. In its appeal, the self-insured contends that the hearing officer erred in finding an MMI date beyond statutory MMI and asks that we render a new determination that the claimant reached MMI on June 6, 1996, in accordance with Section 401.011(30)(B). The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury to her left knee on _____. The claimant testified that on _____, she was working as a cafeteria worker for the self-insured school district; that she had gone outside for a break; that she was walking back into the school; that she had to walk behind a police car in order to get inside; and that as she walked behind the car, it struck her on the left side of her body and "drug her into the street." The claimant maintained that the police car, which was traveling in reverse, struck her in the area of her left thigh, hip, and low back. She stated that she injured those body parts at the time of the accident and that she injured her right knee because of the increased weight-bearing that her injury caused on her right leg.

There are substantial medical records in evidence. The claimant sought treatment from Dr. H. In his Initial Medical Report (TWCC-61), Dr. H notes complaints of left knee and low back pain and diagnoses lumbar strain/sprain and internal derangement of the knee. The lumbar strain/sprain diagnosis is repeated in Dr. H's records; however, those records do not reflect treatment to the lumbar spine. Rather, they focus on the left knee. On November 23, 1994, the claimant was examined by Dr. G. Dr. G's report focuses exclusively on the claimant's left knee and does not reference any back complaints. In December 1994, Dr. H referred the claimant to Dr. DL for treatment of her left knee. Dr. DL determined that the claimant was not a surgical candidate. On May 8, 1995, Dr. DL certified that the claimant reached MMI as of that date with a four percent IR. In the narrative report accompanying his Report of Medical Evaluation (TWCC-69), Dr. DL

explained that the four percent rating was assigned for degenerative joint disease of the patella and stated that the claimant did not have an "objectively defined lesion" that could be improved with surgery.

On October 28, 1994, Dr. LL examined the claimant at the request of the self-insured. In a TWCC-69 dated November 3, 1994, Dr. LL certified that the claimant reached MMI on October 28, 1994, with an IR of zero percent. In his narrative report, Dr. LL stated that the claimant had a "completely objectively normal examination of her left lower extremity." The claimant disputed Dr. LL's certification and Dr. D was selected by the Texas Workers' Compensation Commission (Commission) to serve as the designated doctor. In a TWCC-69 dated February 3, 1995, Dr. D certified that the claimant had not yet reached MMI. The claimant acknowledged that from October 1995 to November 3, 1997, she did not seek medical treatment. On November 3rd she had an appointment with Dr. DL with complaints of right knee pain, shortly after she had slipped and fallen in the bathtub. On July 8, 1998, Dr. D again performed a designated doctor examination on the claimant. In a TWCC-69 dated July 15, 1998, Dr. D certified that the claimant reached MMI on "7/8/98 or by statute" and assigned a zero percent IR. In his narrative report, Dr. D stated "[c]onsidering the inconsistencies noted on this examination and the lack of positive objective findings, I would have to say that [claimant] has reached [MMI] and the [IR] is 0%. No impairment is assessed for limitation of motion as this was considered inconsistent and voluntarily restricted."

Eventually, the claimant changed treating doctors from Dr. DL to Dr. W, a chiropractor. In an April 14, 1999, "To Whom it May Concern" letter, Dr. W stated that the claimant's right knee injury was the result of the fact that her left leg injury required her to put all of her weight on the opposite leg. In addition, Dr. W opined that, given the condition of the claimant's knees, it would be "nearly impossible" to assess a zero percent IR. Dr. W referred the claimant to Dr. M, a neurosurgeon, for a consultation. In a report dated July 29, 1999, Dr. M diagnoses a "lumbar sprain versus lumbar disc with bilateral radiculopathies" and opines that the claimant injured her low back in the _____, incident at work. However, Dr. M's understanding of the incident was that the claimant was hit by the police car and "thrown onto the hood."

The Commission sent the claimant to Dr. C for the purposes of providing an opinion as to whether the claimant's compensable injury included her low back, hip and right knee. In his March 8, 2000, report, Dr. C noted that his examination "failed to find any significant finding to the [claimant's] low back, pelvis, hips or knees relating to any accident 6 years ago."

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury and the nature and extent of her injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). The question of whether the claimant's compensable injury included her low back, hip, and right knee presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him.

Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, the existence of an injury can be established by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos, *supra*; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant's right knee, low back, and hip conditions are not the result of her _____, compensable injury. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the claimant sustained her burden of proving the causal connection between the claimed injuries and her compensable injury. The hearing officer was acting within his province as the fact finder in so finding. In making his determination, the hearing officer emphasized the delayed manifestation of the right knee problems and the lack of treatment for the claimant's low back and hip in the period of time following her injury when she sought treatment. In addition, the hearing officer noted the two-year period in which the claimant sought no medical treatment. All of those factors were properly considered by the hearing officer in making his credibility determinations. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We find no merit in the claimant's assertion that the hearing officer erred in giving presumptive weight to the designated doctor's zero percent IR. Sections 408.122(c) and 408.125(e) provide that the report of a designated doctor selected by the Commission is entitled to presumptive weight unless the great weight of the other medical evidence is contrary thereto. The claimant essentially argues that the reports of Drs. W and M constitute the great weight of the evidence contrary to Dr. D's report. At most, those reports represent a difference in medical opinion as to the proper rating to assign. They do not rise to the level of the great weight of evidence contrary to the designated doctor's report and, as such, the hearing officer properly determined the claimant's IR is zero percent in accordance with the designated doctor's report.

The self-insured asserts that the hearing officer erred in determining that the claimant reached MMI on July 8, 1998. As noted above, Dr. D certified that the claimant reached MMI as of that date "or by statute." The record reflects that the claimant's first day of disability was June 2, 1994, and continued thereafter. Thus, in accordance with Section

408.082, the claimant's income benefits accrual date was eight days later, or on June 9, 1994. Section 401.011(30)(B) provides that if MMI is not reached at an earlier point, it is reached by statute upon the "expiration of 104 weeks from the date on which income benefits begin to accrue." As a matter of law, the hearing officer erred in finding a date of MMI beyond statutory MMI. Thus, we reverse his determination that the claimant reached MMI on July 8, 1998, and render a new determination that the claimant reached MMI on June 6, 1996, 104 weeks after June 9, 1994, the income benefits accrual date in this case.

In her appeal, the claimant contends that the hearing officer erred in finding that she had reached MMI because she still has not reached MMI. This is a case where MMI is established by operation of law and, accordingly, no date of MMI later than June 6, 1996, can be found.

The hearing officer's determinations that the claimant's low back, hip, and right knee conditions are not the result of her compensable injury and that her IR is zero percent are affirmed. His determination that the claimant reached MMI on July 8, 1998, is reversed and a new decision rendered that the claimant reached MMI on June 6, 1996, pursuant to Section 401.011(30)(B).

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge