APPEAL NO. 001262

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 17, 2000. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) urinary incontinence and erectile dysfunction (ED) are not a result of the compensable injury. In his appeal, the claimant asserts error in that determination, pointing to the evidence he believes establishes the causal connection between his urinary incontinence and ED and his compensable injury. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on that date, he was working as an electrical foreman and was "running bus duct." He stated that he lifted a piece of duct weighing approximately 100 pounds, felt a pop in his low back, and developed low back pain that radiated into his left leg.

The claimant's treating doctor for his injury is Dr. L. On June 4, 1999, Dr. L referred the claimant for an epidural steroid injection (ESI), which was performed by Dr. T. The report from the ESI procedure indicates that injections were unsuccessfully attempted at L4-5 and L3-4 before the injection attempt at the L2-3 level was successful. The claimant testified that about a week after the June 4, 1999, ESI, he developed problems with urinary incontinence and ED. The claimant testified that he discussed those problems with Dr. L immediately. However, Dr. L's records do not reflect such complaints. In fact, reports from June 11, 1999; July 12, 1999; July 27, 1999; August 30, 1999; September 9, 1999; and October 11, 1999, state that the claimant denies difficulty with bladder dysfunction. Dr. L's January 10, 2000, report is the first report to reference complaints of intermittent bladder incontinence and ED. The claimant insisted that he had been making complaints continuously and could not provide an explanation of why they were not reflected in Dr. L's records, except to state that he had no control over what Dr. L wrote in his reports. In the January 10, 1999, report, Dr. L states that the problems with urinary incontinence and ED "began after the first selective nerve root block and have been present intermittently since then." Dr. L gave the claimant left S1 selective nerve root blocks on August 5 and September 30, 1999. In his January 10, 2000, report, Dr. L stated that he could "not guarantee that [claimant] did not have some nerve root injury with the selective nerve root block." However, Dr. L further stated that he "would anticipate that if one specific nerve root was injured, however, it would not absolutely lead to his intermittent incontinence and sexual dysfunction. His pain and his pain medications may be contributing to this some." In a March 10, 2000, progress report, Dr. L states, as follows, with respect to causation:

> After review of [claimant's] history of injury, I do feel that his current urinary complaints [are] reasonably related to his work related injury. Urinary treatment should be considered a part of his claim.

Dr. L referred the claimant to Dr. C, a urologist. In a February 1, 2000, letter to Dr. L, Dr. C gives a history of the claimant's having had complaints of "stress, urge, and total urinary incontinence" since his date of injury. Dr. C stated that his examination of the claimant revealed "severe SII, III, and IV motor and sensory deficits, left greater than right, and decreased sphincter tone." Dr. C noted that he had begun the claimant on Detrol and Viagra and that he was going to be conducting urodynamic studies to classify the claimant's neurogenic bladder and to determine a course of treatment.

The carrier called Dr. K as a witness at the hearing. Dr. K conducted a review of the claimant's medical records. Dr. K testified that he does not believe that there is any objective documentation in the claimant's medical records to support the assertion that the ESI caused his urinary incontinence and ED. Dr. K testified that his decision in that regard was based largely on the six-month lapse of time between the ESI and when the complaints of urinary incontinence and ED are recorded in the claimant's medical records. Dr. K further testified that if there had been nerve damage as a result of the ESI, by a high degree of medical probability, the claimant would have suffered immediate consequences. On cross-examination, Dr. K also opined that it was "highly unlikely" that the claimant's _____, injury caused the urinary incontinence or ED either because the claimant's diagnostic testing, namely an MRI, a myelogram, a post-myelogram CT scan, and his EMG/NCV testing were negative and did not reveal a lesion.

The claimant has the burden to prove the causal connection between his urinary incontinence and ED and his compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question 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. 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 did not sustain his burden of proving that his urinary incontinence and ED was the result of his compensable injury or from the treatment for his compensable injury. In his discussion, the hearing officer noted the delay in reference to complaints of urinary incontinence and ED following the ESI and that "none of the doctors in this record specifically stated how either the original injury or any treatment procedure did cause or could have caused the problems

asserted here . . . ." 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 determination that the claimant's urinary incontinence and ED are not the result of his _____, compensable injury 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).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge