APPEAL NO. 001318

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 23, 2000. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) compensable low back injury of _____, is a producing cause of the claimant's current low back injury, including her herniated disc at L5-S1. In its appeal, the appellant (self-insured) argues that the hearing officer's decision is against the great weight of the evidence. The appeals file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____. The claimant testified that she was working in the bakery at a grocery store on that date, that she lifted a heavy mop bucket full of water out of the sink, and that when she put it on the floor, she felt a pop in her low back. An October 1, 1993, lumbar MRI revealed a "central HNP [herniated nucleus pulposus] at the L5-S1 level with resulting loss of anterior epidural space and mild extrinsic compression upon the ventral aspect of the thecal sac." The claimant treated with Dr. W for the _____ compensable injury. Dr. W referred the claimant for a surgical consultation with Dr. R, who in a report of October 15, 1993, concluded that the claimant was not a surgical candidate. The claimant testified that she continued to treat conservatively with Dr. W thereafter until January 1994.

The claimant acknowledged at the hearing that she did not seek medical treatment for her back in the period from January 1994 to November 1999. However, she maintained that her symptoms were constant in that period and that they included low back pain and pain in both legs, which she treated with over-the-counter medications. She further testified that she did not have any accidents or incidents in the period from January 1994 to November 1999 that caused her to experience different or increased symptoms in her back.

Apparently in 1994, the claimant returned to work with the employer where she sustained her injury and continued to work until May 1998, when she began working as a ward clerk at a hospital. She stated that she continued to work at the hospital until January 1999, when she stopped working there because her hours were being cut and she was not making enough money. On February 1, 1999, the claimant started working as a cashier supervisor at another grocery store and she continued to work there until December 30, 1999, when Dr. S and Dr. L took her off work because of her back injury.

In a progress note dated November 16, 1999, Dr. S stated that the claimant was being seen for follow-up on her back and that "she has had difficulty with her back since an injury in _____ which resulted in a herniated disc at L5 on S1 proven by MRI in

October of 1993." At the end of that note, Dr. S states that "[t]he symptoms of back pain that this patient has been evaluated for in November of 1999 are directly related to her injury of _____." In a note of December 28, 1999, Dr. S refers the claimant for a repeat lumbar MRI. The January 12, 2000, MRI demonstrated a "very large focal disc herniation at the L5-S1 level on the right side," which "compresses the thecal sac and adjacent nerve root." Dr. S referred the claimant to Dr. L for evaluation. In a progress note dated March 9, 2000, Dr. L states that the claimant was evaluated for "low back pain secondary to an injury that she had in _____." In addition, Dr. L noted that the claimant was treated conservatively for her _____ injury; that "her symptoms never totally dissolved [sic]"; and that the claimant's "recent diagnostic studies confirmed a large herniated disc at L5-S1. This was central in the same location [as] that documented back in _____." Dr. S recommended "a more definitive and provocative study be done, i.e., discogram to see if her pain is more reproducible" and concluded that the claimant may be a candidate for decompression and stabilization.

The self-insured had Dr. WW conduct a records review and asked him several questions. In a report dated March 26, 2000, Dr. WW stated that the claimant's back and leg pain had worsened in late 1999. Dr. WW was also asked if the claimant's current symptoms are related to the 1993 injury. He responded as follows:

> This question is difficult to answer definitively. Her current symptoms are quite similar to those in the past. The lack of any medical records between 1994 and the end of 1999 makes conclusions about the continuation of symptoms related to the _____ [sic] injury (versus the onset of new symptoms) difficult to make. Given that the only new MRI findings are what appears to be an extension of the old HNP at L5-S1, it would appear that the current symptoms are related to the original injury.

The claimant had the burden to prove that her compensable injury is a producing cause of her current low back injury, including her herniated disc at L5-S1. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury may be proven by the testimony of the claimant 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 a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's determination that the claimant's compensable injury is a producing cause of her current lumbar injury, including the herniation at L5-S1, is against the great weight of the evidence. In her discussion, the hearing officer noted that the evidence did not demonstrate that the claimant had sustained a new injury; rather, she believed that the evidence "indicates that Claimant sustained a compensable injury on _____ which resulted in a herniated disc at the L5-S1 level, which injury appears to have worsened somewhat with the passage of time." The hearing officer's decision in that regard is supported by the evidence from the claimant that she had constant ongoing lumbar problems after her 1993 compensable injury and that she did not sustain an intervening injury; by the evidence from Dr. S and Dr. L that her current low back problems are related to her 1993 compensable injury; and by the evidence from Dr. WW, noting the similarities in her symptoms and the 1993 and 2000 MRI findings, and concluding that "it would appear that the current symptoms are related to the original injury." Our review of the record does not reveal that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal. Pool; Cain. In arguing that the hearing officer's determination is against the great weight of the evidence, the carrier emphasizes the fact that the claimant went for an extended period without medical treatment and that she worked in that period. While the hearing officer could consider those factors in resolving the issue before her, we cannot agree that they comprise the great weight of the evidence contrary to the hearing officer's decision such that a reversal is mandated in this instance.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Gary L. Kilgore
Appeals Judge