

APPEAL NO. 001355

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 issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) sustained a new compensable injury on \_\_\_\_\_, which is limited to a minor aggravation of the condition of Claimant=s T12-L1 disc, and does not extend to or include the remainder of the body parts which Claimant alleges were injured and that she has had disability as a result of her compensable injury from September 14, 1999, through the date of the hearing. In its appeal, the appellant/cross-respondent (carrier) asserts that the hearing officer=s injury and disability determinations are against the great weight of the evidence. In her response to the carrier=s appeal, the claimant urges affirmance of the challenged determinations. In her cross-appeal, the claimant contends that the hearing officer=s determination that her \_\_\_\_\_, compensable injury does not extend to or include her neck, shoulders, arms, legs, or knees is against the great weight of the evidence. In its response to the claimant=s appeal, the carrier repeats its argument that the claimant did not sustain any compensable injury.

DECISION

Affirmed.

The claimant testified that she began working for the employer as a janitor on February 8, 1999. It is undisputed that the claimant sustained a compensable injury on (prior date of injury), to her right knee and low back for which the carrier accepted liability. The claimant acknowledged that she was off work because of the (prior date of injury), compensable injury through September 12, 1999. She stated that on \_\_\_\_\_, she returned to work for the employer as a janitor; that she was assigned to work on a different floor than she had worked on prior to her first compensable injury; that the floor was substantially larger and dirtier than the floor she cleaned previously; that about two hours after she began her shift on \_\_\_\_\_, she developed pain in her back, arms and legs but she thought it was just due to her having not worked for several months; and that she completed her shift that evening but her pain continued and worsened. The claimant testified that she went home after work, took over-the-counter pain medications, soaked in a hot bath, and used a heating pain. She stated that her pain persisted and grew worse, such that she sought medical treatment in the emergency room early in the morning on September 14, 1999.

The claimant had a lumbar MRI performed on April 7, 1999, which revealed a dessicated disc at L5-S1 with an 8 mm posterocentral disc herniation; disc dessication at T12-L1 without significant abnormalities; and mild loss of disc height at T12-L1. On February 14, 2000, the claimant had a second lumbar MRI, which demonstrated a 2 to 3 mm diffuse posteriorly protruded disc, slightly more left paracentral posteriorly at T12-L1

with partially torn annulus posteriorly, @compressing the thecal sac but not the cord; a 3.5 mm sharply-outlined concentric posterocentrally/very slightly right laterally herniated and extruded disc through the sizably torn annulus at L5-S1; and 20% to 30% reduction of the disc height at T12-L1.

The claimant had the burden to prove that she sustained a new injury on \_\_\_\_\_, as opposed to having continuing symptoms related to her (prior date of injury), compensable injury. 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(a). 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. 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. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's injury determination is against the great weight. In deciding that the claimant sustained a compensable injury, namely an aggravation of the condition of her T12-L1 disc, the hearing officer noted that a comparison of the initial MRI and the second MRI demonstrates that the T12-L1 disc has deteriorated, since the initial MRI revealed only dessication with a mild loss of disc height, whereas Claimant=s later MRI revealed a twenty to thirty percent loss of disc height, with a partially torn annulus, and impingement on the thecal sac. The hearing officer was acting within her province as the fact finder in determining that the claimant sustained a compensable injury to the T12-L1 disc based on the claimant=s testimony to that effect and the evidence revealed through a comparison of the April 1999 and February 2000 MRIs. Our review of the record does not demonstrate that the hearing officer's injury 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 that determination on appeal. Pool; Cain.

The carrier=s challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of that determination, we likewise affirm the determination that the claimant had disability as a result of her compensable injury from September 14, 1999, through the date of the hearing.

Finally, we briefly consider the claimant=s challenge to the hearing officer=s determination that the compensable injury did not extend to and include injury to her neck, shoulders, arms, legs, or knees. The claimant testified that she injured these body parts as a result of the activities she performed at work on \_\_\_\_\_; however, the hearing officer, as the fact finder, was not bound to accept that testimony. In her discussion, the hearing officer specifically stated that she was not inclined to accept at face value Claimant=s allegation of having the multiple other injuries she claimed . . . . The hearing officer=s determination in that regard was a matter left to her discretion as the fact finder. Our review of the record does not reveal that the hearing officer=s extent-of-injury

determination is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Kathleen C. Decker  
Appeals Judge

Susan M. Kelley  
Appeals Judge