

## APPEAL NO. 001446

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 June 1, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; and that he has had disability since January 26, 2000. The appellant (self-insured) appealed, contending that these determinations are against the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant worked as a firefighter for the self-insured. He sustained back injuries in a nonwork-related motor vehicle accident (MVA) on \_\_\_\_\_. He was released to unrestricted full duty by Dr. A on March 3, 1998. On \_\_\_\_\_, he was at the fire station preparing coffee; as he reached for the coffee and filters, the filters fell to the ground. When he reached down to pick them up, he said, he experienced sharp pain in his lower back and was essentially immobilized for a period of time. It was his contention that the incident on \_\_\_\_\_, was a new injury. The position of the self-insured was that the claimant sustained only a flare-up or recurrence of his previous injury that arose out of the MVA.

In evidence were MRIs done after the MVA and after \_\_\_\_\_. The first MRI was read as showing degenerative disc disease of L4-5 with a four-millimeter "protrusion" and pressure on the thecal sac as well as "mild encroachment of the right and left neural foramina at this level." The second MRI was read as showing desiccation at L4-5 "with a central and slightly left side grade IV herniated disc at L4-5." In a letter of April 24, 2000, Dr. N, a referral doctor, responding to an inquiry from the ombudsman about whether he thought the claimant sustained a new injury or merely had a recurrence of symptoms, wrote "[h]istorically it is most reasonable to assume that there was additional damage or worsening of his condition resultant from the accident of \_\_\_\_\_." Dr. B performed a records review at the request of the self-insured and concluded that his current symptoms "were most likely attributable to" the MVA for the following reasons: it is part of the "normal course" for the original condition to start with an acute injury and "then be followed by periods of remission and exacerbation . . ."; the original injury from the MVA was significant with long-standing consequences; and the two MRIs were "very similar."

The hearing officer considered this evidence and determined that the claimant established a new injury on \_\_\_\_\_. In reaching this conclusion, she stated that she considered the later MRI together with the claimant's testimony that the original injury did not merit surgical intervention, while his current condition does. She also found Dr. B's opinion less credible because she found no merit in his belief that the two MRIs showed fairly similar results. In its appeal, the self-insured essentially reiterated its arguments at

the CCH that the 1997 MVA produced serious injuries and that the interpretations of the two MRIs appeared "identical." Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. As fact finder, she was required to resolve discrepancies in the evidence and determine what facts had been established. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Under this standard of review, we find that the evidence and inferences drawn from that evidence, deemed credible and persuasive by the hearing officer, were sufficient to support the hearing officer's findings of fact and conclusions of law.

The self-insured appealed the disability finding on the basis that there was no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge