APPEAL NO. 001591

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 12, 2000. The hearing officer determined that the appellant's (claimant) compensable _____ (thoracic and lumbar) injury does not extend to the cervical area and that the claimant has disability from January 5, 1999, through the date of the CCH. The claimant appeals, contending that his initial treating doctor misdiagnosed or overlooked his cervical injury and that his subsequent treating doctor has diagnosed a "possible herniated cervical disc" which is related to the original compensable injury. The claimant also appeals the hearing officer's decision on disability, apparently misunderstanding a stipulation on an initial agreed-upon period of disability. In that the disability was decided entirely in the claimant's favor, we will not address it further. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The appeals file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

The claimant was employed as a "transporter" at the self-insured's facility. The claimant testified that he felt pain and injured his back on _____, helping a patient out of a wheelchair into bed. The parties stipulated that the claimant sustained a compensable injury on that date. The claimant's accident report dated December 30, 1998, indicates a "[b]ack strain" injury. The claimant began treating with Dr. H and in a report of the _____, visit, Dr. H diagnosed lumbar radiculitis, thoracic sprain, and muscle spasms. Dr. H began daily treatment reduced to three times a week and took the claimant off work. Subsequent reports all refer to thoracic and lumbar complaints. An MRI (not in evidence) was apparently performed on February 5, 1999. The doctors reference that report as showing either a disc bulge or disc herniation at T6-7. The hearing officer states that "[t]esting revealed herniations at T6-7." Dr. H released the claimant to modified duty on April 22, 1999, and at the claimant's request (report of April 22, 1999), referred the claimant to Dr. S for an orthopedic evaluation.

In an Employee's Request to Change Treating Doctors (TWCC-53) dated April 20, 1999, the claimant requested to change treating doctors from Dr. H to Dr. S, which was approved by the Texas Workers' Compensation Commission (Commission) on April 26, 1999. In a report dated May 24, 1999, Dr. S recites that the claimant "had an MRI in Houston which revealed [herniated nucleus pulposus] HNP in the cervical spine and another one in the lumbar spine." It is unclear where Dr. S got this information or if he was referring to a prior injury not at issue here. In that report, Dr. S for the first time mentions cervical radiculitis. Subsequent reports all reference neck or cervical complaints with several reports beginning June 9, 1999, referring to a "bulging disc, T6-T7," while a September 28, 1999, report references an "HNP T6-7." Reports after September 1999 generally refer to a herniated disc at T6-7. A note dated October 18, 1999, states that the

claimant "may have a herniated disc on his cervical spine also." In a report dated January 10, 2000, Dr. S was of the opinion that in "all the medical probability . . . [the claimant's] symptoms of the cervical spine are directly related to [the compensable injury]."

The claimant was examined by Dr. F, the self-insured's required medical examination doctor who, in a report dated May 17, 1999, noted a "posterior bulge at T6-7" and did not note any cervical complaints, with the chief complaint a backache.

The claimant contends that he told all the doctors (Dr. H, Dr. F, and Dr. S) about his cervical complaints. The hearing officer, in her Statement of the Evidence, comments:

> It is of note that the report of injury completed by Claimant indicated back strain. Claimant initially gave a history of upper and low back sprain to [Dr. H]. On the Commission TWCC 53 Claimant listed his injury as a back injury. Though Claimant argues that this includes the whole back, this argument is not persuasive in light of the initial medical documents which confirm a thoracic and lumbar injury only. Claimant contends that he always mentioned the neck pain. This pain is not reflected in [Dr. H's] records nor [Dr. F's]. There is an opinion of [Dr. S] that the pain in the thoracic area radiates from the cervical but this contention has not been substantiated as of the date of the hearing. When the sum of the evidence is considered, Claimant did not establish that his compensable injury extended to the cervical area.

The claimant's appeal stresses Dr. S's reports, and contends that Dr. H misdiagnosed the injury and Dr. F's examination was inadequate. Clearly the evidence is in conflict. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge