APPEAL NO. 001602

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 June 15, 2000. The hearing officer determined that the respondent (claimant) suffered an injury on _____, which included an injury to his back; that the claimant used leave time to cover missed time from work and may have suffered disability but insufficient information was available to determine this issue because of the possibility of a leave-use agreement or constitutional protection for the claimant; that this issue was returned to a benefit review conference to review any applicable personnel policies and Texas Constitution provisions relating to peace officers; that the claimant had not timely reported the incident but had good cause for any failure to report his back injury prior to _____; and that the claimant's injury of _____, is not the sole cause of his back problems.

The appellant (self-insured) appealed only the injury finding. The self-insured argues that the medical evidence presented on the causation issue is mere speculation or guess and is not based upon objective medical testing. The self-insured also argues that the evidence clearly established that the claimant injured his back while lifting his daughter at home some two months after his work-related accident and that this was the sole cause of resulting infirmity. The claimant responded that expert medical evidence was not required in this case to establish the injury, and that the self-insured did not meet its sole-cause burden. There is no appeal of the timely notice issue and remand of the disability determination.

DECISION

We affirm the hearing officer's decision.

The claimant was employed as a patrolman for (public employer) for three and one-half years before the date of his injury, which was _____. The accident happened on the evening shift; the claimant gave chase to a suspect after a traffic stop, and pursued the suspect onto a high chain-link fence with barbed wire at the top. He said that the suspect had the "angle" on him as he climbed the fence in pursuit and that the suspect kicked him hard in the chest, knocking him backwards onto the cement slab below. The claimant said that he fell mainly onto his mid back.

The claimant was treated at an emergency room (ER) with a tetanus shot because he had a puncture wound and scrapes on his hand and arms. He said that he did not realize he had hurt his back and, therefore, did not seek treatment at the ER. The next day, he was sore, and remained stiff and sore the next couple of weeks. The claimant said he commented to another trooper about his back pain and showed him his area of pain, and that this trooper brought him a book on exercises that he could do for back pain. The claimant said he did the exercises and this helped.

A statement from his partner, Ms. A, verified the account of the accident and of the claimant's on and off complaints of back pain. A report of the incident that was given when it happened stated that the claimant fell onto his back; the suspect was eventually charged with assault of an officer because of the blow. The claimant's supervisor, Sgt. J, filed a statement corroborating the incident and the fact that the claimant reported that he fell onto his back, but Sgt. J stated an actual back injury was not reported to him until _____.

It was fairly uncontroverted that the claimant's life prior to the accident was one of physical activity. The claimant was 29 years old at the time of the accident. He said that he worked out about three times a week and jogged, and described certain physical minimum conditions that were required to be admitted to the public employer's academy. The claimant said that his only prior back problem occurred 10 years earlier when he was in the Marines and was injured playing recreational basketball. At that time, he was overseas, and an injection stopped the back pain that he had from a twisting incident.

The claimant said that after the _____, incident, he basically jogged but did not work out as much. This was due in part to the impending birth of his son, which occurred in January 1999. The claimant characterized his continuing back discomfort as a dull ache and he treated it with the exercises he learned from the trooper's book and over-the-counter medication.

Although the self-insured's attorney explored what the claimant may, or may not, have experienced in the years before the accident, the basis recited for the self-insured's defense, and part of the issue before the hearing officer, was that there had been a subsequent intervening incident leading to greater injury. This incident occurred when the claimant, on _____, went to lift his 24-pound toddler and felt sudden popping and pain in his back which caused him to collapse. He was transported to the hospital by ambulance. MRI testing subsequently done showed a herniation at L5-S1 and a prominent bulge at L4-5.

Although surgery was recommended, the claimant decided to try physical therapy for six weeks, which he said greatly improved his condition, and, after a brief course of light-duty work, he returned to full-time work for the public employer. The claimant missed two weeks of work right after _____.

Both the claimant's family doctor, Dr. A, and a doctor for the self-insured, Dr. V, opined that while the herniation may have occurred on _____, the _____, incident was the origination of back infirmity that caused the lifting incident to be more injurious than it otherwise would have been. As Dr. V stated:

> [The claimant's] injury on 12-5-98 probably predisposed him to the larger injury on _____. Since the discs consist of tough fibers around a softer, gel-like interior, injuries that lead to tearing of the outer fibers will make herniation of the interior much easier to occur under much less physical stress.

Dr. V certified that the claimant reached maximum medical improvement on June 11, 1999, with a five percent impairment rating.

At the outset, it is worth noting that the definition of "injury" in the 1989 Act includes "a disease or infection naturally resulting from the damage or harm" that constitutes the initial injury. Section 401.011(26). This definition is broad enough to cover conditions that manifest at a later time, although the connection to the original injury must be present in the evidence. The claimant had the burden to prove the extent of his compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. In Western Casualty & Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the Texas Supreme Court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and that the full consequences of the original injury, together with the effects of its treatment upon the general health and body of the worker, are to be considered.

We do not agree that objective testing or expert evidence was required to prove extent of injury in this case. That aside, there actually was medical opinion supporting the connection of the herniation to the original injury, and the claimant's testimony and that of Ms. A support that the claimant had a level of back discomfort following the altercation with the suspect. An injury may be compensable although aggravated by subsequent injuries. Hardware Mutual Casualty Company v. Wesbrooks, 500 S.W.2d 406 (Tex. Civ. App.-Amarillo 1974, no writ). An injury is no less compensable if that injury, or necessary and proper treatment therefor, results in other injuries. Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam,* 432 S.W.2d 515). A discussion of the law followed by the Appeals Panel regarding follow-on injuries may be found in Texas Workers' Compensation Commission Appeal No. 951822, decided December 18, 1995.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). 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, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the

overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In reviewing the decision here, we find it sufficiently supported and not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge