

APPEAL NO. 001655

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 14, 2000. The hearing officer determined that the appellant's (claimant) symptomatic scoliosis is not the result of the compensable injury sustained on _____, and that the claimant had disability from October 16, 1998, through October 23, 1998, resulting from the injury. We will treat the claimant's appeal as a request for a review of the sufficiency of the evidence to support these determinations. In its response, the respondent (carrier) asserts that the evidence is sufficient to support them.

DECISION

Affirmed.

The hearing officer's decision and order contains a thorough recitation of the evidence. Accordingly, only that evidence germane to this decision will be set out.

The claimant testified that her scoliosis (an appreciable lateral deviation in the normally straight vertical line of the spine) was diagnosed in 1994 and treated by Dr. K with pain and muscle relaxant medications only; and that on _____, while employed as a teacher's assistant, she aggravated, in her opinion, her scoliosis when she slipped and fell forward onto her knees entering a restroom at a hotel where she was attending a conference. She said her neck and back were injured in that fall. The claimant further testified that she asked to be taken by an EMS unit to an emergency room (ER) and that she was examined and released. The ER record for that date reflects the impression as "status post fall with cervical and lumbar spine sprain, and musculoskeletal pain." The claimant further stated that following the ER visit, she missed a few days of work and may have taken sick leave for those days; that she was subsequently treated first by Dr. JC and later by Dr. GC who has recommended scoliosis surgery; and that on December 2, 1998, she was taken off work by Dr. GC.

Although the claimant stated that before her fall she could go up and down the stairs "all day" at the child care center where she worked, she conceded on cross-examination that she was taking medications for the pain from her scoliosis and that quite some time before her fall she had filed for Social Security disability benefits because she was having difficulty with work.

Dr. K's record of June 25, 1996, states that the claimant has moderately severe thoracolumbar scoliosis and may require a fusion with instrumentation. Dr. JC's treatment note of April 8, 1997, states that the claimant has a history of severe scoliosis and gets back and hip pain and that these pains have been getting worse. He wrote on August 4, 1998, that the claimant has been having much more pain in the back of the neck.

Dr. GC reported on December 16, 1999, that the claimant has been having relatively chronic mid-back and lower neck pain with occasional referral about the shoulder. He further wrote on February 21, 2000, that the claimant “may have aggravated her back in a fall in which she describes as occurring at work” and on March 31, 2000, that she has been unable to work since December 2, 1999. Dr. GC wrote on April 20, 2000, that he has followed the claimant for idiopathic scoliosis; that she has a significant curvature which is in excess of 60E; that curvatures of this magnitude may be expected to significantly progress; and that she needs surgical treatment. Dr. GC also stated that “[a]s far as her workman’s comp injury is concerned, there is a possibility that an injury may have significantly aggravated her pre-existing condition.”

Dr. H, to whom the claimant said she was referred for a second opinion on surgery, reported on May 23, 2000, that the claimant “has been in pain for a long period of time and has multiple somatic complaints related to this chronic pain syndrome.” Claimant acknowledged that she has been and continues to be treated for depression.

The hearing officer found that the claimant has had continuing symptoms from her scoliosis from 1994 through August 1998; that her scoliosis has been severe and surgical treatment has been mentioned; that Dr. GC’s stating that it was a “possibility” that the scoliosis was aggravated by the fall does not rise to the level of reasonable medical probability; and that the compensable injury did not aggravate, worsen, or accelerate the preexisting scoliosis. The hearing officer also found that the period of the claimant’s disability from the compensable injury was from October 16 through October 23, 1998.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King’s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could conclude from all the medical evidence that the claimant suffered no more than a sprain/strain injury when she fell which resulted in her having disability from October 16 through October 23, 1998, and that she failed to prove that her slip and fall injury aggravated the scoliosis in the sense of making it symptomatic.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge