

APPEAL NO. 001699

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 27, 2000. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury does not extend to include the thoracic region; that the claimant does not have disability as a result of the compensable injury; and that the claimant's impairment rating (IR) is eight percent as certified by the designated doctor selected by the Texas Workers' Compensation Commission. In her appeal, the claimant challenges each of those determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to the low back on _____; that she reached maximum medical improvement (MMI) on January 27, 2000, as certified by the designated doctor, Dr. E, D.C.; and that the claimant's IR is eight percent if her compensable injury does not extend to the thoracic spine and 13% if it does. The claimant testified that she injured her thoracic spine in addition to her lumbar spine lifting a box of frozen food at work. On April 27, 1999, the claimant sought medical treatment at the emergency room with complaints of low back pain. She was diagnosed with a left lumbar strain. The claimant testified that her pain has been in the same place since the date of the injury and that her pain has been in the "low -mid back" and the "low back."

The claimant's treating doctor is Dr. N, D.C., who has diagnosed lumbar intervertebral disc displacement, thoracic and lumbosacral neuritis or radiculitis, and muscle spasms. An August 30, 1999, thoracic MRI revealed mild diffuse disc dessication at T11-12. Dr. N referred the claimant to Dr. J on September 22, 1999. In treatment notes from that visit, Dr. J stated that the claimant presented with "tenderness of the paraspinals of T10-11-12 on the left side and the quadratum lumborum on the left side. . . ." Dr. J diagnosed myofascial pain syndrome and thoracolumbar pain.

On January 27, 2000, Dr. E performed a designated doctor examination of the claimant. In a Report of Medical Evaluation (TWCC-69) of the same date, Dr. E certified that the claimant reached MMI on January 27, 2000, with an IR of 13%, which was comprised of five percent for loss of range of motion (ROM) in the thoracic spine, five percent for a specific disorder of the lumbar spine, and three percent for loss of lumbar ROM. In a letter dated April 10, 2000, Dr. E stated that he provided a rating for the claimant's thoracic spine because based upon his examination of the claimant he believed that her thoracic spine injury was part of the compensable injury. Dr. E explained that the "mechanism of injury is consistent with a lifting and turning motion to the spine, as T12 is a transitional vertebra: it is highly susceptible to this type of injury."

The claimant has the burden to prove the nature and extent of her compensable injury and that she has had disability as a result of her compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). The questions of whether the claimant's compensable injury extends to her thoracic spine and whether she has had disability presented the hearing officer with questions of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that her compensable injury extends to her thoracic spine or that she has had disability as a result of her compensable injury. The hearing officer simply was not persuaded that the claimant had sustained her burden of proof on the extent-of-injury or disability issues. Our review of the record does not reveal that the hearing officer's determinations in that regard are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury or disability determinations on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The parties stipulated that the resolution of the IR issue was dependent on the resolution of the extent-of-injury issue. Thus, given our affirmance of the hearing officer's determination that the compensable injury does not extend to a thoracic spine injury, we likewise affirm the hearing officer's determination that the claimant's IR is eight percent, the rating certified by the designated doctor for the lumbar injury only.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge