

APPEAL NO. 001727

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 23, 2000. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to the lumbar spine. The claimant appealed the adverse determination on the basis of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient to support the determination of the hearing officer and should be affirmed.

DECISION

Affirmed.

The claimant testified she tripped on a sidewalk at work on _____. She fell forward but did not fall down. After the incident, the claimant experienced pain in her right knee and left ankle. After seeking medical treatment for the right knee and left ankle she was diagnosed with a sprained left ankle and internal derangement of her right knee. The claimant stated she initially underwent conservative therapy for her right knee but ultimately had arthroscopic surgery on the knee on February 16, 1999. The claimant asserted that she began to have lower back pain in December 1998 and attributed the development of back pain from wearing a knee brace, using crutches and favoring her right knee which resulted in an altered gait.

The claimant initially sought medical treatment with Dr. O whose records do not document any complaints of lower back pain through February 16, 1999. The claimant was also seen by Dr. S for a second opinion on her knee. His record of December 21, 1998, does not document any complaints of lower back pain. The claimant subsequently changed to Dr. W, who began treating the claimant with chiropractic therapy on March 8, 1999, documenting right knee pain and lower back pain. The claimant was referred to Dr. D on March 31, 1999, who examined the claimant for complaints of right knee and lower back pain. Dr. D wrote that the claimant described difficulty with her lower back and left hip since December 1998, which she attributed to wearing the knee brace, using crutches and favoring her right knee. The physician wrote that "the etiology of her lower left side back and left hip pain is unclear."

The claimant continued treating with Dr. W and she was examined by Dr. H on May 18, 1999. Dr. H's report of May 18, 1999, reflects that the claimant "had x-rays done in city 1 by Dr. Ha and was told she had a malformation of her pelvis." He reviewed an MRI of her lumbar spine which indicated a diffuse herniation at L4-5 and a bulge at L3-4. He wrote that the claimant was "showing moderately severe degenerative osteoarthritis and disc disease involving the last three levels." After EMG studies were performed, Dr. H wrote, "[in] any event, I think that she probably has an L5 nerve root irritation. This probably began about six weeks ago although the patient is not really certain exactly when and thinks it was related to a knee injury that she sustained last year and had surgery for this year."

The claimant subsequently underwent a second arthroscopic procedure on her right knee on August 28, 1999, which was followed by a lumbar laminectomy on September 27, 1999. The postoperative diagnosis was left lumbar radiculitis secondary to lumbar disc degeneration and spondylosis with lateral recess stenosis at L4-5. After surgery, the claimant sought a letter from Dr. Ha, who, by letter dated January 17, 2000, wrote “[given] the temporal relationship, it is reasonable to assume a causal relationship between the fall and subsequent back problems.” Dr. W also provided the claimant a letter dated February 10, 2000, stating that in “[his] professional opinion, [the claimant] has a compensable injury from her knee problem.” The claimant underwent a second surgery on her back on June 13, 2000.

Section 401.011(26) defines “injury” to mean damage or harm to the physical structure of the body and a disease or infection “naturally resulting from the damage or harm.” The question of the compensability of a subsequent or follow-on injury is generally one of fact to be decided by the hearing officer. Texas Workers’ Compensation Commission Appeal No. 94067, decided February 28, 1994. In Texas Workers’ Compensation Commission Appeal No. 961540, decided September 23, 1996, the Appeals Panel stated that under certain circumstances an injury may be caused by an altered gait but noted that a claimant must prove by reasonable medical probability that the follow-on injury was caused by the compensable injury.

The hearing officer found that the claimant’s low back pain was diagnosed as left lumbar radiculitis secondary to lumbar disc disease and spondylosis with probable L4 disk herniation, possible L5 disc herniation and/or spinal stenosis. She determined that the claimant failed to prove by a preponderance of the evidence that her back condition resulted from the compensable injury sustained on _____.

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). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer’s determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King’s Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers’ Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Philip F. O'Neill
Appeals Judge