

## APPEAL NO. 001744

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 July 6, 2000. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of \_\_\_\_\_, extended to her low back. In its appeal, the appellant (self-insured) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In her response to the self-insured's appeal, the claimant urges affirmance.

### DECISION

Affirmed.

The hearing officer's decision contains a detailed factual recitation that will not be repeated here. The parties stipulated that the claimant sustained a compensable cervical injury on \_\_\_\_\_. The claimant testified that she worked as a licensed vocational nurse for the self-insured's hospital and that she sustained her injury when she caught a patient that was falling. The claimant stated that she also injured her lumbar spine in the \_\_\_\_\_ incident. On October 16, 1999, the claimant had a lumbar MRI which revealed a herniation at L5-S1 with compression of the left S1 nerve root.

In support of her claim that she also injured her low back in the \_\_\_\_\_, incident at work, the claimant presented medical records from the self-insured's health center dated September 24, 1998; October 9, 1998; and October 27, 1998, all referencing complaints of low back pain. In addition, the claimant introduced her January 28, 1999, Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which lists her low back as one of the parts of the body affected by her injury.

The claimant introduced various reports from Dr. T, who became her treating doctor, that state that the claimant's low back was injured in the \_\_\_\_\_, incident at work. However, the self-insured emphasized that in a February 2, 1999, report, Dr. T stated that the claimant's "pain seems to have spread to the low back."

The self-insured also introduced the reports of Dr. K, who examined the claimant at the request of the self-insured. In his report, Dr. K opined that the claimant's low back injury was not part of the compensable injury because of the delayed manifestation of low back complaints in the claimant's medical records. In addition, Dr. M, the designated doctor, excluded the claimant's lumbar spine from her impairment rating because he could not "document that she injured her lower back because it is not documented in her medical records that are available for my review today." Dr. M's report also reflected that the claimant's Waddell's test was "significant for symptom magnification."

The claimant had the burden to prove that her compensable injury included her low back. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the self-insured contends that the hearing officer's decision is against the great weight of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of her claim. The self-insured emphasized the same factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant's compensable injury included her low back is supported by sufficient evidence and our review of the record does not demonstrate that that determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge