

APPEAL NO. 001828

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 12, 2000. With regard to the only issue before him, the hearing officer determined that the respondent's (claimant) claimed injury to his neck, both shoulders, both arms, and upper back is due to and related to the compensable (right knee) injury of _____ (all dates are 2000 unless otherwise noted). The appellant (carrier) appealed, emphasizing the conflicting evidence, questioning the claimant's credibility, and pointing to the claimant's previous workers' compensation injuries. The carrier asserts that the claimant had not sustained his burden of proof and requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a truck driver/logger. The parties stipulated that the claimant sustained a compensable (right knee) injury on _____, when he was struck by a log that was being lifted onto a truck. There were a number of recorded and written statements, as well as other documentary evidence in the record. Much of the carrier's case involves pointing out discrepancies and inconsistencies between the claimant's testimony and the various statements, or contradictions among the statements. For example, it is disputed whether the claimant was knocked "down," "backward," or up in the air by the log. The claimant was taken to the hospital emergency room (ER) from the scene of the accident and it is undisputed that the claimant went to the ER a number of other times. Only one undated record which purports to be an ER record is in evidence and that document indicates the patient (the claimant is not identified on the document) was "Recently seen/treated" by a doctor "on 3/10" (no year is given). The carrier asserts it was the claimant's responsibility to provide the ER records and suggests the ER records were not provided because they were unfavorable to the claimant.

Documentation, and the claimant's testimony, establish that the claimant has had 12 previous workers' compensation claims going back to 1977, at least one of which, in February 1997, resulted in a cervical fusion. The carrier has accepted liability for a right knee injury and the claimant has had right knee surgery. Principally at issue is whether the _____ incident also caused a neck injury which appears to be the cause of the claimant's arm and shoulder complaints. A cervical MRI performed on April 12 indicates a "large left paracentral C3-4 disc herniation impinging upon the spinal cord and deforming it." The MRI also noted the previous C4-5 anterior fusion (from the 1997 injury) "stable since 1998." The claimant also had "significant degenerative disc disease" below the C5-6 cervical fusion. The claimant's treating doctor is Dr. R, who in a report dated April 13 comments:

[The claimant] underwent MRI of the cervical spine on 4-12-00. This showed a difference between the MRI before the accident on 2-17-00 as compared to the MRI on 4-12-00, which was after the accident. On the MRI dated 4-12-00, there is a fairly large left paracentral C3-4 disc herniation impinging upon the spinal cord and deforming it. This was not on the previous MRI before his last accident.

In my opinion, this could have been caused by his work related injury on 2-17-00 while working for [employer], when the log struck his right lateral knee, knocking the patient down on the ground, onto his left shoulder and jerking his cervical and thoracic spine.

(The preinjury MRI is not in evidence.) In a May 10 report, Dr. R referred to the cervical injury as "a work-related injury." In evidence is a 1997 report from Dr. JR regarding the success of the 1997 cervical spinal fusion.

As previously noted, the record is replete with inconsistencies regarding who said what to whom and when, etc. The hearing officer, in his Statement of the Evidence and Discussion, points out some of the inconsistencies and concludes:

The medical evidence is not such as to definitively establish that the claimant's current cervical condition was caused in whole or in part by the _____ incident. On the other hand, the claimant's already degenerated cervical spine would certainly be vulnerable to further injury from the type of fall the claimant undoubtedly sustained. Further, the claimant was clearly able to perform his usual job duties before the _____ incident, and was obviously in much worse shape thereafter. Taking all the circumstances into consideration, it is more likely than not that the claimant at the least aggravated his pre-existing cervical problems in the _____ incident.

The carrier's appeal (and argument at the CCH) points out some of the inconsistencies and inferences which could be drawn from those inconsistencies which might have led another fact finder to come to a different conclusion; however, we have many times stated that alone does not warrant or require a reversal of the hearing officer's decision. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge