APPEAL NO. 001932

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 17, 2000. Initially, there were six issues before the hearing officer; however, two were resolved by stipulation. The remaining unresolved issues were:

1. Did the claimant [appellant] sustain an injury in the course and scope of employment on _____?

* * * *

3. Did the claimant have disability, and if so, for what period(s)?

4. What is the date of injury?

5. Is the carrier [respondent] relieved from liability under Tex. Labor Code Ann. § 409.002 because of the claimant's failure to notify the employer within 30 days of the injury pursuant to Tex. Labor Code Ann. § 409.001?

With regard to those issues, the hearing officer determined that "claimant did not sustain an injury . . . on _____"; that "claimant did not have disability, as there was no injury"; that the date of the claimed injury was _____; and that the claimant timely reported her injury. The timely reporting issue has not been appealed and has become final. Section 410.169.

The claimant timely filed a request for review, then timely filed an amended request for review, which also had attached "Claimant's Response to Carrier's Request for Review." (Our appeal file did not contain a Carrier's Request For Review and the Response appeared to deal with a matter not the subject of this case.) The claimant basically argues that even if she had preexisting problems, the claimant's "repetitive lifting" aggravated those problems and the hearing officer applied the wrong standard with the correct test being "whether **a** cause of Claimant's pelvic problems is repetitive heavy lifting, not whether claimant proved heavy lifting was **the** cause of her pelvic problems." (Emphasis in the original.) The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier filed a lengthy response which essentially asks us to affirm based on sufficiency of the evidence.

DECISION

Affirmed as reformed.

This case is complicated by the fact that the claimant has had two prior CCHs and three prior appeals to the Appeals Panel on related issues. In Docket No. _____,

Texas Workers' Compensation Commission Appeal No. 992425, decided December 10, 1999 (Unpublished), the Appeals Panel affirmed the hearing officer's decision that the claimant had not reached maximum medical improvement, but had no disability for a lumbar strain sustained on August 27, 1998. That case also commented that there "was no issue as to the 'second injury'" (of _____). Texas Workers' Compensation Commission Order No. 000002, issued February 1, 2000, declined to reconsider our decision in Appeal No. 992425. In Docket No. _____, Texas Workers' Compensation Commission Appeal No. 000550, decided May 1, 2000, the Appeals Panel affirmed the hearing officer's decision that as a result of the compensable injury sustained on August 27, 1998, the claimant had disability beginning October 5, 1999, and continuing through the date of the CCH, February 28, 2000. In evidence in this case is the transcript audiotapes, the hearing officer's decision and order, both claimant's and carrier's appeals and the Appeals Panel decision in Appeal No. 992425, *supra*. We reiterate that we will not revisit our decision in Appeal No. 992425 and we consider this case on the question of whether the claimant sustained a compensable injury on _____, identification of that claimed injury and whether the claimant had disability from that injury (as opposed to the August 27, 1998, injury).

The claimant was employed by a news company stacking magazines on racks and shelves in retail stores. The claimant had returned to work after the August 27, 1998, injury and alleges that she sustained another injury on _____, stretching, reaching and stacking magazines in various racks and shelves. The hearing officer, in his Statement of the Evidence, and Discussion, commented:

> [Claimant] asserted a specific trauma-type injury to her lower abdominal muscles resulting in symptoms of pelvic relaxation, including bulges of the ureter, rectum, and bladder into the vagina. [We will refer to these and other associated diagnoses as pelvic and abdominal problems.] She rather forcefully denied that she was asserting a progressive, occupational disease-type injury, although much of her testimony involved the radical increase in her job activities in the weeks prior to _____ (all dates are 1998 unless otherwise noted). She stated that although the increased workload caused her to feel significant pain throughout her whole body, including her abdomen and pelvic area, she felt a definite "tearing" sensation during the reaching incident on [sic] October and only after that noted the specific symptoms of pelvic relaxation.

The medical evidence is in conflict. Dr. B, apparently a treating doctor, in a report dated October 14, 1998, references the claimant's increased workload which "caused repetitive trauma to the patient during bending, stooping and lifting of the magazines." (Dr. B referenced that the claimant moved an average of 20 "totes of magazines weighing an average of 50 lbs. each.") Other off-work slips and a report dated August 30, 1999, make similar comments. Dr. M, a chiropractor who has been treating claimant's lumbar injury, refers to lower abdominal pain, recommends the claimant see a gynecologist in a report of June 7, 2000, and states she did not perform an examination of the claimant's

"reproductive organs, urinary tract or gastrointestinal tract" but, nonetheless, comments on other doctors' opinions at length in a report dated June 8, 2000. Dr. H, in a record review dated May 12, 2000, defines some of the technical terms, discusses the records he reviewed and the claimant's history and concludes that "*from a medical standpoint* the claimant experienced the end result of an ordinary disease of life consistent with her gender." (Emphasis in the original.) The claimant was also examined by Dr. S, whose letterhead indicates he is an orthopedic surgeon, who, in a report dated January 17, 2000, commented that the claimant's "physical problems are the least of her concerns in that her emotional stability, depression, and feelings of inadequacy are at the forefront." The hearing officer summarizes the various positions, references medical literature in evidence and comments on the medical evidence:

> None of the doctor's records in evidence here is particularly persuasive. [Dr. M], as a chiropractor, is discussing matters rather far removed from her area of expertise; [Dr. B] seems to be speaking from the perspective of someone who would like to be paid; while [Dr. H] seems to be discussing matters from a legal, rather than purely medical standpoint; and [Dr. S] does not address the specific issue here. In strictly medical terms, the evidence indicates that the cause of symptomatic pelvic relaxation is most likely progressive, but traumatic origins are not entirely ruled out.

Although the evidence is conflicting, the hearing officer, and the claimant on appeal, appear to be treating this as a repetitive trauma injury rather than a discreet event that took place on _____. The hearing officer makes the following specific findings to support his conclusions of law and decision previously mentioned:

FINDINGS OF FACT

2. The claimant did not sustain an injury while performing her job duties on _____.

3. The claimant's current pelvic and abdominal problems are the result of an ordinary disease of life.

4. The claimant's condition has prevented her from obtaining and retaining employment at her pre-injury wages from October 12, 1999, up to and through the date of the hearing.

5. The claimant first knew or should have known that her condition was related to her job on _____.

As previously noted, the evidence is in conflict. We agree that this is the type of case which is generally beyond the common knowledge and experience of lay persons and requires expert medical evidence. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as

the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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.

Accordingly, we affirm the hearing officer's determination and only reform the determinations to add the words “pelvic and abdominal” before the word “injury” in Finding of Fact No. 2 and add those words before the word “injury” in Conclusions of Law Nos 2 and 4 and in the first and second sentences of the decision.

The hearing officer's decision, as reformed, and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge