APPEAL NO. 001985

Following a contested case hearing held on August 7, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the respondent's (claimant herein) compensable injury included her disc herniation at L5-S1. The appellant (carrier herein) files a request for review, arguing this determination is not supported by the evidence. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in her decision and we adopt her rendition of the evidence. We will briefly touch on the evidence most germane to the appeal. This includes the fact that the parties stipulated that on _____, the claimant sustained a compensable injury. The claimant testified that she injured her low back while working as a janitor. An MRI performed on the claimant on February 13, 1992, revealed a moderate disc herniation at L4-5 and a mild disc herniation at L5-S1. The claimant underwent spinal fusion surgery at L4-5 in March 1992. The claimant testified that she returned to work after her spinal surgery but continued to have numbness and tingling. The claimant sought medical treatment in 1995 from Dr. A and a course of treatment that included anti-inflammatory medication and steroid injections. In 1999 Dr. A recommended spinal surgery at L5-S1 and this surgery was approved through the spinal surgery second opinion process. The claimant underwent a discectomy at L5-S1 in August of 1999. Dr. P, a carrier-selected peer review doctor, stated in a letter dated June 5, 2000, that based upon his review of the claimant's medical reports the claimant's August 1999 surgery was not related to her compensable injury but resulted from the progression of degenerative disease in the claimant's lumbar spine. Dr. Po and Dr. S, both of whom were required medical examination order doctors, expressed the opinion that the claimant's compensable injury was a producing cause of the claimant's L5-S1 disc herniation. Dr. S states as follows in a report June 19, 2000:

> The question is whether the _____, compensable injury is a producing cause of the diagnosed disk herniation at L5-S1 and if the requested surgery was necessitated by the compensable injury. The answer to this is clearly yes; however, it needs to be qualified in that the injury of _____ was not the only cause for the L5-S1 disk herniation treated surgically in August of 1999. There were also degenerative changes in the process. I will agree with Dr. Po, however, that the degenerative processes that were ongoing were accelerated by the fusion procedure which fused one level and placed greater movement activity at levels both below and above the L4-L5 lesion.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. This is also true of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard we find no error in the hearing officer's determination that the claimant's _____, compensable injury extended to include her diagnosed disc herniation at L5-S1. This finding is supported by the opinions of Dr. S and Dr. Po. While Dr. P expresses a contrary opinion, it was the province of the hearing officer to resolve conflicts in the evidence. While the carrier argues very strongly on appeal that the passage of time from the compensable injury in 1992 and the surgery in 1999 argues against causality, we note that the 1989 Act provides lifetime medical treatment for compensable injury, a concept which inherently involves the passage of time, and in some instances a great deal of time, between an injury and some of the treatment for the injury.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Tommy W. Lueders
Appeals Judge