

## APPEAL NO. 002024

This appeal is brought 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 August 10, 2000. At the CCH, the appellant (carrier) and the respondent (claimant) agreed that the issue before the hearing officer was:

Is the Claimant's subsequent injury from a motor vehicle accident on \_\_\_\_\_ the sole cause of her current medical problems to the cervical, thoracic, and lumbar regions of her spine?

The claimant and the carrier stipulated that "[o]n \_\_\_\_\_, the Claimant sustained a compensable injury to her neck, thoracic region, and low back area, which resulted in a 27% impairment rating [IR]." The hearing officer made the following findings of fact and conclusions of law:

### FINDINGS OF FACT

4. From December 1999 through March 11, 2000, the medical condition of the Claimant's spine from her compensable injury progressively worsened and her pain therefrom progressively increased.
5. On \_\_\_\_\_, the Claimant was involved in a minor motor vehicle accident [MVA] involving very little damage to either vehicle. The bumping that she received from behind in the [MVA] did no more than slightly exacerbate some of the Claimant's pre-existing symptoms from her compensable injury.
6. On \_\_\_\_\_, the Claimant did not sustain a new and intervening injury to her spine, as defined in Section 410.011 of the Act.

### CONCLUSION OF LAW

2. The Claimant did not sustain a subsequent injury from a [MVA] on \_\_\_\_\_, and any resulting effects therefrom do not constitute the sole cause of her current medical problems to the cervical, thoracic, and lumbar regions of her spine.

The carrier appealed; cited court of civil appeals, supreme court, and appeals panel decisions concerning producing cause and sole cause; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded; stated that the determinations of the hearing officer are factual and true; made some statements that are not in the record and will not be considered by the Appeals Panel; and requested that the decision of the hearing officer be affirmed.

## DECISION

We affirm.

The Decision and Order of the hearing officer contains a thorough statement of the evidence. Only a brief summary of the evidence will be included in this decision. In \_\_\_\_\_, the claimant, a registered nurse, injured her back when she and another nurse lifted a patient in a hospital; a designated doctor certified that the claimant reached maximum medical improvement on June 9, 1998, with a 27% IR, consisting of impairment for specific injuries to and loss of range of motion in the cervical, thoracic, and lumbar spine; in August 1998, the claimant returned to work, working for a school district; and in August 1999, the claimant began working for another hospital in the pediatric section.

The claimant testified that while working at the second hospital, she missed work because of her back condition; that in December 1999, she went to Dr. KS because of her back pain; that after December 1999, her back condition got worse and worse; and that she continued to work her usual job that required that she care for babies and small children, but that she missed work some time because of her back pain. She said that on \_\_\_\_\_, she was driving a small pickup truck; that she was stopped at a signal light, that a small car was stopped behind her, that the driver of the small car moved that car before she moved the truck, and that the small car barely bumped the truck she was in; that there was a little crack in the molding on the bumper of the truck and the license plate of the car was bent a little bit; and that she worked the next two days. The claimant stated that on March 11, 2000, she worked four hours and her thoracic area was hurting so bad that she went home; that her treating doctor was not available; that she went to an emergency room on March 13, 2000; and that that was the first time that she went to a doctor after her visit to Dr. KS in December 1999. She testified that she had pain every day of her life; that she woke up with pain and went to bed with pain; that when you have that much pain, it is difficult to determine what causes the pain; and that she had more pain after the MVA, but did not know if it was because of the MVA.

In a neurological follow-up note dated December 22, 1999, Dr. KS said that his impression was recurrent cervical radiculopathy; that the claimant was taking 2400 mg of Motrin a day and was having some nausea and stomach upset; that he changed her to Celebrex; and that if she is not substantially improved after about two or three weeks, he may try another anti-inflammatory. In another neurological follow-up note dated April 12, 2000, Dr. KS stated that the claimant was involved in a minor MVA in March 2000; that she worked a full shift and subsequently developed low back and midthoracic pain; that she had radiation into both legs; that thoracic and lumbar MRI studies were repeated at the request of another doctor; and that those MRIs should be compared with earlier MRIs. Reports of MRIs of the thoracic spine are in the record. In a report concerning the thoracic spine dated March 14, 2000, Dr. K stated “[c]ompared to prior Lexington MR scan of 9-26-99, there does not appear to have been a significant interval change.”

In its request for review, the carrier stated that the issue is whether the claimant's MVA on \_\_\_\_\_, produced an intervening injury that is now the sole cause of the claimant's current condition and cited numerous interesting decisions concerning initial burden of proving a compensable injury, causal connection, sole cause, inferential rebuttal, and burden of proof. The parties stipulated that the claimant "sustained a compensable injury to her neck, thoracic region, and low back area, which resulted in a 27% [IR]." The parties agreed that the issue was is the claimant's subsequent injury from a motor vehicle accident on \_\_\_\_\_, the sole cause of her current medical problems to the cervical, thoracic, and lumbar regions of her spine. The hearing officer stated that the burden of proof was on the carrier. Neither party stated disagreement with that statement.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. An appeals level body is not a fact finder, and it 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). The hearing officer made the findings of fact and conclusion of law set forth earlier in this decision. There is no indication that he improperly placed the burden of proof in making those determinations. His factual determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and there is not a sound basis to disturb them. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and the order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge