

## APPEAL NO. 002099

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 August 14, 2000. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to or include a lumbar spine injury and that he did not have disability as a result of his compensable injury after November 29, 1999. In his appeal, the claimant essentially argues that the hearing officer's extent-of-injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to his right hand on \_\_\_\_\_. The claimant testified that on that date, he was working as a kitchen cabinet installer; that he and a coworker were carrying a large cabinet; that he was walking backwards; that he fell backwards, landing on his buttocks; and that the cabinet landed on his right hand causing a laceration. The claimant sought medical treatment with Dr. L on \_\_\_\_\_. Dr. L sutured the laceration on the claimant's right hand and gave him a tetanus shot. On August 23, 1999, Dr. L certified that the claimant reached maximum medical improvement (MMI) with an impairment rating of zero percent.

Dr. L's records do not contain complaints of back pain after the \_\_\_\_\_, incident; however, Dr. L's records from late 1997 and early 1998 reflect complaints of back pain. The claimant acknowledged that in 1978 he had lumbar surgery and that in 1997 he had back problems after he jumped in the air to catch a ball while playing softball. The claimant explained that the pain at that time was in the back part of his right leg above the knee; that he was treated with medication and physical therapy; that his condition improved; that he was not receiving treatment at the time he began doing the heavy work of cabinet installation; and that he was able to perform his job duties as a cabinet installer for approximately seven months without developing back problems. On cross-examination, the claimant acknowledged that in 1997 he applied for social security disability benefits based on the condition of his right shoulder and low back.

The first mention of the claimant's low back appears in November 29, 1999, medical records from Dr. C. Dr. C's records reflect complaints of pain in the right gluteal area going down the back of the right thigh. The records also contain a history of the claimant's having injured his back in the fall at work.

On December 11, 1997, the claimant had a lumbar MRI, which revealed a "posterocentral disc herniation at L5-S1 causing minimal encroachment upon the spinal canal, but no significant neural foraminal encroachment." The 1997 MRI report also stated

that there was "slight loss of height and signal at the disc compatible with early degenerative disc disease." On November 30, 1999, the claimant had a second lumbar MRI, which was compared with the December 1997 study. The MRI report states that the study "demonstrates a posterior central disc herniation at L5-S1, somewhat larger than the prior study with right-sided predominance." That report also states that there was "some apparent progression" of the claimant's herniation at L5-S1 over the two-year period between his MRIs.

Dr. R reviewed the claimant's MRIs from 1997 and 1999 and stated that only the November 1999 MRI revealed a herniated disc at L5-S1 to the right. In a report dated June 8, 2000, Dr. E, the designated doctor selected by the Texas Workers' Compensation Commission, stated that the claimant had not reached MMI with respect to the lumbar spine injury. Dr. E further stated that "the lumbar spine injury does appear to be related to the \_\_\_\_\_ event."

The claimant had the burden to prove the nature and extent of his compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An extent-of-injury issue presents 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 facts have been established. 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).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving that his \_\_\_\_\_, compensable injury extends to and includes a lumbar injury. That is, the hearing officer was not persuaded that there was a causal connection between the fall at work and the claimant's lumbar injury. Our review of the record does not demonstrate that the hearing officer's determination in that regard 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. Although another fact finder may well have drawn different inferences from the evidence, which would have supported a different result, that does not provide us with a basis to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Given our affirmance of the determination that the claimant's compensable injury does not extend to or include a lumbar injury, we likewise affirm the hearing officer's determination that the claimant did not have disability after November 29, 1999, because the claimant's inability to work was due to his lumbar injury and not the compensable right hand injury.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Robert W. Potts  
Appeals Judge