APPEAL NO. 002120

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 August 7, 2000. The hearing officer determined that on _____, the respondent/cross-appellant (claimant) was involved in a motor vehicle accident (MVA) in the course and scope of his employment; that prior to the MVA, the claimant had a large focal posterior herniation of the L4-5 disc, slightly to the left of midline, and disc degeneration and posterocentral disc protrusion at L5-S1; that although the claimant suffered increasingly severe symptoms after the MVA, there does not appear to be any additional damage or harm to the physical structure of the claimant's lumbar spine or any acceleration of the degenerative disc disease in the claimant's lumbar spine which is causally related to the MVA; that the claimant did not sustain an injury in the course and scope of his employment on _____; that the claimant timely notified the employer of the claimed injury; that the appellant/cross-respondent (self-insured) timely contested compensability of the claimed injury; and that, since the claimant did not sustain a compensable injury, he did not have disability. The self-insured appealed the determination that the claimant timely notified it of the claimed injury, urged that that determination is so against the great weight and preponderance of the evidence as to be manifestly unjust, and requested that the Appeals Panel reverse that determination and render a decision that the claimant did not timely report the claimed injury. The claimant appealed the determinations that he was not injured in the course and scope of his employment and did not have disability, attached a report from Dr. R that is dated after the date of the CCH, commented on the evidence, and requested that the Appeals Panel render a decision in his favor. The self-insured responded, stated that the Appeals Panel did not have authority to consider the new evidence from Dr. R, urged that the evidence is sufficient to support the determinations appealed by the claimant, and requested that the Appeals Panel affirm the determinations appealed by the claimant.

DECISION

We affirm.

The claimant testified, called four witnesses, and had documents admitted into evidence. The carrier called two witnesses and had admitted into evidence documents and photographs of the vehicle the claimant was driving when he had the MVA. The Decision and Order of the hearing officer contains a statement of the evidence that includes quotations from a report of an MRI of the lumbar spine dated June 26, 1998, and from a report of an MRI of the lumbar spine dated May 16, 2000. Only a brief summary of the evidence will be included in this decision. In June 1998 the claimant worked for a nursing home, had back pain, went to Dr. R, and had an MRI performed. He testified that he did not have problems after that, did not follow up on the problem, went to a police academy, graduated, passed a physical examination required for a police officer, and immediately began working for the self-insured in May 1999.

The claimant was involved in an MVA on _____. He contended that he was injured in the MVA; that he told the chief of police that he was injured in the MVA; that the self-insured did not timely contest the compensability of his injury; that he continued to work in pain until May 12, 2000, when he could no longer work because of the pain; and that he had disability after that date. The carrier contended that the claimant was not injured in the MVA, that he did not timely report an injury to the self-insured; that the self-insured did not learn that the claimant contended that he was injured in the MVA until May 12, 2000; that it timely contested the compensability of the claimed injury on May 18, 2000; and that since the claimant did not sustain a compensable injury, he did not have disability.

There is not a conflict between the determinations that the claimant timely notified the self-insured of the claimed injury on _____, and that the self-insured timely contested compensability of the claimed injury on May 18, 2000. In Texas Workers' Compensation Commission Appeal No. 951741, decided December 6, 1995, the Appeals Panel held that written notice of injury to a self-insured constituted written notice of an injury that started the 60-day period for the self-insured to contest the compensability of the claimed injury even though the self-insured used an adjusting company to process workers' compensation claims. In the case before us, the first written notice was not in November 1999, but was in May 2000.

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 evidence. 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. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. We did not consider information that is not in the record. 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 could 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 believed some of the testimony of the claimant but did not believe all of it. In his statement of the evidence, the hearing officer stated that he was unable to appreciate any significant difference between the two MRI reports which would indicate that there has been any new damage or harm to the physical structure of the claimant's body as a result of the MVA on _____, or a worsening of his physical condition. That different factual determinations could have

been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer appealed by the claimant and by the self-insured, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge