APPEAL NO. 002123

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 23, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____,[1] and that he had disability beginning April 19, 2000, and continuing through the date of the CCH. The appellant (self-insured) requested review, urged that the evidence is not sufficient to support the determinations of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury on _____, and that he did not have disability. In the alternative, the self-insured requested that the Appeals Panel reverse the decision of the hearing officer and remand to her for additional findings. A response from the claimant has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified that he provided total care for mentally retarded patients; that his job required him to do a lot of twisting, bending, moving of patients, and lifting of patients; that he used machines to help move patients; that he had been seeing doctors for about two years before the date of injury because of back pain; that blood tests were performed to eliminate other causes of his back problems; that Dr. G, an orthopedic surgeon, asked what he did at work and off work; that he told Dr. G what he did; that Dr. G told him that his back condition was related to the lifting and bending he did at work; and that he reported it as a work-related injury the day Dr. G told him that it was related to his work. The claimant said that in 1991 he sustained a bulging disc at L4-5 while lifting a pot and twisting; that that injury resulted from a specific event and that his current injury resulted from repetitive lifting and twisting; that he had therapy for the 1991 injury and had recovered from it; and that a CAT scan showed that he now has a bulging disc at L5-S1. A report from Dr. G dated August 1, 2000, states that a CAT scan shows a mild disc bulge at L5-S1, but no other problems.

Handwritten medical notes from a walk-in clinic dated March 22, 2000, seem to state that the claimant reported moving dirt from a truck into a wheelbarrow. The claimant testified that he went to a clinic about then, that he has not moved dirt and did not tell medical personnel that he used a wheelbarrow to move dirt, and that he may have told them that he put a patient in a wheelchair.

[1]This would be more accurately stated "with a date of injury of _____," since the injury was an occupational disease that resulted from repetitive trauma.

In a report dated May 1, 2000, Dr. G stated that the claimant had a history of back problems in the past; that those problems seemed to have cleared up; that the claimant said he had to lift about 15 patients a day at work; that repetitive work caused the problems the claimant has at the present time; and that the claimant cannot go back to his regular work because of the pain in his back.

A 1991 report of an MRI of the claimant's lumbar spine states that he had degeneration of the L4-5 disc with a small posterior protrusion. A medical report dated February 11, 1991, from Dr. R states that the claimant had mild L4-5 radiculopathy bilaterally.

Dr. H examined the claimant and reviewed medical records at the request of the self-insured. In a letter dated June 13, 2000, he mentioned the claimant's 1991 injury at the L4-5 level; stated that the claimant was obese; and opined that the claimant's symptoms were more a natural consequence of those preexisting factors as opposed to any particular work-related event. Apparently, this letter was written before the CAT scan showed the disc protrusion at L5-S1.

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). 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). In its appeal, the self-insured makes arguments concerning the requirements to prove that an occupational disease was incurred in the course and scope of employment that were not specifically made at the CCH. In the statement of the evidence, the hearing officer stated that the claimant appeared credible in his testimony that his work activities required repetitive bending and lifting and that he sustained an injury to his back as a result of those activities. That and other statements of the hearing officer indicate that she properly considered the law contained in the self-insured's appeal. The hearing officer's determination that the claimant sustained an injury in the course and scope of his employment is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. 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).

The self-insured's appeal of the determination that the claimant had disability beginning April 19, 2000, and continuing through the date of the CCH is based on the argument that the claimant did not sustain a compensable injury. Since we affirmed the determination that the claimant sustained a compensable injury, we also affirm the determination that the claimant had disability.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge