APPEAL NO. 002197

This appeal arises 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 24, 2000. The issue at the CCH was whether the respondent (claimant) was entitled to lifetime income benefits (LIBs) as the result of an injury to his spine resulting in complete paralysis of both legs. The hearing officer found that the claimant was entitled to LIBs and the appellant (carrier) appealed that determination. The carrier asserts that the claimant failed to prove that the spinal injury was part of the compensable injury and further failed to prove that the spinal injury had resulted in the complete paralysis of both of the claimant's legs. The claimant responded that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

We affirm the decision of the hearing officer as reformed.

The claimant was employed as a machinist on _____, and sustained a compensable injury as he was picking up a steady rest, part of the lathe operated by the claimant. The claimant initially believed that he had simply strained a muscle, but several days after the incident he began to experience weakness in his left leg accompanied by a limp. He sought medical treatment, was diagnosed with a lumbar strain, and underwent conservative treatment.

After a course of conservative treatment, the claimant returned to work at full duty. He worked for several weeks, then noticed the return of his earlier symptoms. The recurrent symptoms were more pronounced than those of the initial onset. The claimant returned to his doctor, who then referred the claimant to Dr. P.

Dr. P diagnosed the claimant's problems as stemming from compression of the spinal cord in the cervical spine. Surgery was recommended and performed. The claimant improved and, several months after the surgery, he was released to return to work. The claimant returned to work, but after several months he again began to experience recurrent weakness in his lower limbs. The claimant returned to Dr. P who opined that the claimant's spinal cord had been damaged. Dr. P also stated that part of the problem was the development of scar tissue at the spinal cord which would inevitably progress, causing further damage with the resultant loss of voluntary motor control over the lower extremities.

The carrier asserts that the hearing officer erred in accepting Dr. P's assessment of the cause of the claimant's progressive loss of the use of his legs. It is noted at this point that the carrier does not contest that the claimant has lost the use of his legs and that both legs are paralyzed; the carrier contests that the claimant's paralysis is the result of the compensable injury of _____. Inherent in the carrier's contest, as set forth in its

appeal, is the threshold issue of whether the cervical injury, from which the paralysis stems, is part of the compensable injury.

The claimant has undergone three separate spinal surgeries in the course of the treatment of his compensable injury. The necessity of at least two of those surgeries was contested by the carrier and the spinal surgery second opinion process was invoked. In each of those instances spinal surgery was ultimately approved. It is axiomatic that spinal surgery is unnecessary to treat a compensable injury unless the part of the spine for which surgery is recommended is part of the compensable injury. Although there was no stated extent-of-injury issue before the hearing officer, but because of the nature of the challenge to the claimant's entitlement to LIBs, the hearing officer had to resolve the extent issue in order to resolve the issue which was expressly before him. The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of that injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact.

The hearing officer made the following findings of fact:

> 2. On _____, Claimant worked as a machinist for Employer. Claimant's job duties included moving parts and adjusting the mechanism of a machine lathe.
>
> 3. On _____ [sic, 24], Claimant suffered a spinal injury while adjusting the mechanism of a machine lathe. Claimant's leg symptoms arose out of a spinal injury in an incident at work on _____ [sic, 24].
>
> 4. Claimant had a surgical procedure in October 1992, which involved the decompression of the spine at C6-7.
>
> 5. Claimant's spinal injury on _____ [sic, 24], caused complete loss of functional use of both of Claimant's legs by June 1, 1998 when Claimant became confined to a wheelchair. Claimant's loss of functional use of his legs means that Claimant has no voluntary control over any leg motion, a condition that his [sic] permanent, that in reasonable medical probability will not improve, and that will permanently prevent Claimant from using his legs in returning to the workplace.

It is evident from the hearing officer's discussion of the evidence and the record before us, which discusses only a single incident, not two, that the identification by the hearing officer of a "_____" injury is a typographical error. We reform Finding of Fact No. 3 and Finding of Fact No. 5 to read as follows:

3. On _____, Claimant suffered a spinal injury while adjusting the mechanism of a machine lathe. Claimant's leg symptoms arose out of a spinal injury in an incident at work on _____.

5. Claimant's spinal injury on _____ caused complete loss of functional use of both of Claimant's legs by June 1, 1998 when Claimant became confined to a wheelchair. Claimant's loss of functional use of his legs means that Claimant has no voluntary control over any leg motion, a condition that is permanent, that in reasonable medical probability will not improve, and that will permanently prevent Claimant from using his legs in returning to the workplace.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines 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 that end, the hearing officer may believe all, part, or none of the evidence before him. Only were we to find that the hearing officer's determination was so against the great weight of the evidence as to be manifestly unjust would we substitute our judgment for his. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer's determination that the cervical injury is a part of the compensable injury and has resulted in the claimant's loss of use of his legs is inherent in his finding that the claimant is entitled to LIBs. It is clear from the foregoing findings of fact that the claimant's spinal cord injury resulted from the injury of _____, and that the claimant's paralysis in both legs was the result of the spinal cord injury. We do not find the hearing officer's determination on the extent of the claimant's injuries to be clearly wrong or manifestly unjust and we affirm that determination.

Having affirmed the hearing officer's determination that the claimant's cervical injury is a part of the compensable injury, we turn to the question of whether the evidence supports the hearing officer's determination that the cervical injury caused the paralysis of the claimant's legs. While the carrier presented evidence from Dr. DV that brought the question of whether the cervical injury was the cause of the progressive paralysis, the claimant presented evidence from Dr. P and a number of other doctors that clearly link the cervical injury to the paralysis. The hearing officer, as the trier of fact, may believe all, part, or none of any witness's 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. This is equally true regarding medical evidence. Campos, *supra*. Only were we to conclude, which we do not in this case, that the hearing officer's determinations were 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, *supra*. Since we find the evidence sufficient to support the determinations of the hearing officer, we will not

substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Since the hearing officer's decision is supported by the evidence and there is no reversible error in the record, we affirm the hearing officer's decision and order as reformed hereinabove.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge