

APPEAL NO. 002313

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 was held on September 6, 2000. The appellant (carrier) and the respondent (claimant) stipulated that on _____, the claimant sustained a compensable injury to her cervical spine. The hearing officer determined that on _____, she also injured her low back in the course and scope of her employment. The carrier appealed, contended that the hearing officer improperly summarized medical reports of Dr. K, summarized evidence favorable to its position, urged that the determination of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not injure her lumbar spine on _____. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that when she was a child, she had polio and that later she limped slightly and had slight lower back pain when she was very fatigued. She said that on _____, she was an assistant school principal; that she moved books, furniture, and other heavy objects; that her whole body hurt; that her main problems were in her neck, left shoulder, left arm, and both legs; that she had pain in her low back, but it was not severe; that she went to Dr. K, a chiropractor; that she told Dr. K that her entire body was in pain; and that she told Dr. K about the back pain, but Dr. K focused on the most severe area. The claimant stated that after the injury she could not stand for very long and could not walk very far; that she had cervical surgery 13 months after the injury; that she thought that surgery would take care of her back problems; that the surgery helped her neck, shoulder, and arm but it did not help her lower back or legs; that the surgeon, Dr. V, told her that it would take time; that her lower back and legs did not get better; that the carrier denied a lower back injury; that in January 1998 she had an MRI that was paid for by her health insurance; and that the MRI revealed a bulging disc in her lower back.

Ms. A testified that she is a friend and coworker of the claimant; that she went to pick up the claimant at lunchtime on _____; that the claimant was in a lot of pain and said that she could not walk; that she helped the claimant get into her car; and that she had not seen the claimant in that condition before. Ms. A stated that she and a sister helped take care of the claimant both before and after the neck surgery; that after the injury and before the surgery, they got pillows to relieve the pressure on the claimant's low back; and that two weeks after the surgery, the claimant was concerned about her lower back and legs not getting any better.

A report from Dr. K dated _____, states that the claimant reported that she was injured at work lifting school equipment and that she had pain in her neck, left shoulder, and left arm. In a Specific and Subsequent Medical Report (TWCC-64) dated April 20, 1997, Dr. K stated that an MRI revealed large herniated discs at C4-5 and C5-6. Dr. K wrote letters dated November 19, 1999; November 30, 1999; and July 19, 2000, in which she stated that it was initially believed that the claimant's low back pain and weakness was attributed to her post polio syndrome; that the low back was symptomatic initially and continued to be problematic for her; that the claimant noticed the back problems more after the neck surgery; that the emphasis was shifted from the neck to the back due to increased severity of the symptoms; and that the most plausible explanation is that increased lifting, bending, and moving may have enhanced and worsened the lower back condition. In a letter dated July 19, 2000, Dr. M, a chiropractor, stated that the claimant was under his care in October 1996; that she was being treated for severe cervical, arm, and shoulder pain; that on the first visit, she said she was having some trouble with her low back; and that in his opinion, the low back condition is related to the initial work accident.

The carrier complains that in his brief statement of the evidence the hearing officer wrote:

The medical records reflect that following her injury, Claimant was treated by [Dr. K] whose notes in November of 1996 reflect "The patient is complaining of back pain after lifting boxes off a truck. She is now complaining of neck and shoulder pain."

The record contains an Initial Medical Report (TWCC-61) from Dr. K dated November 6, 1996, that states that the claimant's previous polio affects her lower back and left lower extremity at times when fatigued. That TWCC-61 does not contain the quotation in the hearing officer's statement of the evidence, but that quotation is in the history section of a November 5, 1996, DERMATOMAL STUDY OF THE UPPER EXTREMITY of Dr. H that also states that there was an abnormal study consistent with left C6 radiculopathy which showed improvement following adjustment. In closing statements, both the carrier and the claimant referred to that quotation. It is unfortunate that the hearing officer attributed the quotation to the wrong doctor, but it did not result in reversible error.

In a letter dated September 26, 1998, Dr. V stated that the claimant continued to complain of lower back pain with radiation into the right lower extremity. On July 28, 1999, Dr. V reported that an MRI showed elements of lumbar stenosis with a combination of a bulging disc and lateral recess stenosis and nerve root compression. In a letter dated July 5, 2000, Dr. V stated that a November 1996 medical report indicated that the claimant was complaining of back pain after lifting boxes off a truck; that the claimant had lumbar stenosis, a factor that is in part related to anatomical conditions; that the claimant aggravated that preexisting medical condition; and that in all reasonable medical probability, there is a causal connection between the claimant's _____, on-the-job injury and her present lower back condition.

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). Only were we to conclude, which we do not in this case, that the hearing officer's determination that the claimant injured her low back in the course and scope of her employment on _____, is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb that determination. 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). Since we find the evidence sufficient to support the determination of the hearing officer, 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:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge