

## APPEAL NO. 002315

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 1, 2000. The appellant (carrier) and the respondent (claimant) stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury to her right calf, right hip, and left ankle. The hearing officer determined that the claimant's current back problems were caused or aggravated by the compensable fall on \_\_\_\_\_, and that the claimant's compensable injury sustained on that day extends to an injury to her back. The carrier appealed; contended that the hearing officer abused her discretion in admitting a June 8, 2000, report from Dr. R, the treating doctor; urged that the hearing officer erred in determining that Dr. H, the Texas Workers' Compensation Commission-selected designated doctor, diagnoses a lumbar injury with pain radiating into both hips and that the claimant's compensable injury extends to her back; stated that "current back problems" is unclear and does not specifically identify the injury; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable injury does not extend to her back. The claimant responded, stated that the hearing officer believed her testimony that she timely exchanged the report from Dr. R, contended that the report of Dr. H indicates that the claimant had a lumbar spine injury, urged that the determinations of the hearing officer are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust, and requested that the hearing officer's decision be affirmed.

### DECISION

We affirm.

We first address the carrier's contention that the hearing officer abused her discretion in admitting the June 8, 2000, report of Dr. R, the orthopedic surgeon who performed surgery on the claimant after her 1990 injury. In that report, Dr. R stated that the claimant was quite well following the surgery until the \_\_\_\_\_ accident and that, according to the information given, the "accident either caused or exacerbated a previous condition." The carrier objected to the report of Dr. R being admitted into evidence, contending that the claimant did not timely exchange the report. The hearing officer believed the testimony of the claimant that she timely exchanged the report and admitted it. On appeal, the carrier stated that the hearing officer did not make a finding of good cause to admit the document. The hearing officer found that the claimant timely exchanged the report; therefore, a finding of good cause for not timely exchanging the report was not needed.

The carrier also contended that the hearing officer erred in finding that Dr. H, the designated doctor, diagnosed the claimant with a lumbar injury with pain radiating into both hips. In a Report of Medical Evaluation (TWCC-69) dated February 21, 2000, Dr. H stated that the claimant had not reached maximum medical improvement. In a narrative report attached to the TWCC-69, Dr. H stated that the claimant complained of pain in the lower

thoracic and lumbar spine that radiated into both buttocks, hips, and thighs; that she had frequent spasms of the lumbar paraspinal muscles on both sides; that when she sits down, she gets tingling into her lower legs and feet; and that she wanted her back problem evaluated. Dr. H summarized medical records; reported the results of his musculoskeletal examination and neurological examination; and wrote:

I really don't have enough information to make an impairment evaluation. If the lumbar spine is being included in the compensable injury and is accepted, then it is important to at least get a complete lumbosacral x-ray series to include the lower portion of the thoracic spine as well. Since [claimant] has not had the x-rays with the current injury, I do not believe it possible to give her an adequate impairment evaluation at this time. I will be happy to see her again once at least the lumbar spine x-ray series has been accomplished.

The hearing officer is the trier of fact. In her statement of the evidence, she wrote "[Dr. H] noted the continuing complaints and did not speak to causation. [Dr. H] found radicular pain to both of Claimant's hips." She made Finding of Fact No. 5 that states "[Dr. H] diagnosed Claimant with a lumbar injury with pain radiating into both hips." Dr. H did not use diagnose in his narrative report and the hearing officer could have used other words in Finding of Fact No. 5, but she did not err in making Finding of Fact No. 5. Her comments in the statement of the evidence and Finding of Fact No. 5 indicate that she did not improperly consider the report of Dr. H in rendering her decision.

The Decision and Order of the hearing officer contains a thorough statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant injured her lumbar spine in 1990 and had surgery. On \_\_\_\_\_, the claimant stepped back to get out of the way of a truck; fell over a large piece of concrete; twisted her left ankle; and landed on her back. The claimant testified that she was hurting all over; that she told the doctors that her left ankle was swollen and throbbing, that her hips were hurting, and that she had pain in her right leg; that, at first, emphasis was given to treatment of her ankle; that on April 14, 1999, she complained of back pain; that the doctor requested an MRI; that the MRI was not approved because the carrier disputed the back injury; and that she saw Dr. R in June 2000.

A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated March 17, 1999, states that the claimant fell on broken concrete and that the diagnosis was left ankle sprain. An accident report from an industrial clinic dated March 22, 1999, states that the claimant fell over broken concrete and injured her right calf, right hip, and left ankle. The claimant was questioned by an adjuster on March 24, 1999. A transcript of that interview indicates that the claimant said that her worst pain was in her ankle, that her hips were hurting really bad, and that she had injured her right calf.

In a letter dated May 10, 1999, Dr. S said that on April 14, 1999, the claimant stated that she had back pain and that she had back surgery 10 years previously; that prior to that

the claimant had reported pain in her left ankle and right hip; and that an April 19, 1999, request for an MRI of the lumbar spine had been denied by the carrier.

Dr. A examined the claimant at the request of the carrier. In a report dated September 16, 1999, he opined that the claimant's recurrent back symptoms and right thigh pain and numbness "can not be related to the incident of \_\_\_\_\_."

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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 compensable injury sustained by the claimant on \_\_\_\_\_, extends to an injury to her back 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge