APPEAL NO. 002334

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 September 15, 2000. The hearing officer determined that the compensable injury of _____, was a producing cause of the respondent's (claimant) low back condition after May 26, 1999. The appellant (self-insured) appealed the adverse determination on the grounds of sufficiency of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The testimony at the CCH was very limited. The claimant testified that he sustained an injury to his lower back on _____, while employed as a firefighter. He stated that he was treated by Dr. L; was off work until April 12, 1994; and did not seek medical treatment after January 1995. The claimant related that between 1995 and 1999 he did not have anymore problems with his back other than pain but he was given relatively lighter duties at work in order to prevent any reoccurrence of a back injury. An adjuster's affidavit reflects that the self-insured did not receive any bills for medical service between January 1995 and May 1999. The claimant stated that he retired on August 13, 1999.

The claimant stated that prior to his retirement in August, he had an accident at home on May 26, 1999. The claimant explained that he stepped down into his garage out of the main part of the house and thereafter began having sharp pain in his back and could hardly walk. The claimant testified that he sought medical treatment the same day with Dr. L and later on with Dr. Ga, who told him that he had the "same injury, it was just re-injured." A letter from the claimant dated May 6, 1999, reflects that on April 22, 1999, he went out of his garage and "must have stepped wrong" and sought medical treatment with Dr. L on April 24, 1999.

An MRI performed on September 1, 1993, notes that the claimant had been diagnosed with a low back strain and he had pain radiating into the buttocks and legs. The MRI indicates a small central disc protrusion involving the L4-5 disc which only mildly indented the anterior thecal sac and was of unclear clinical significance. Degenerative changes were found at L4-5 and L5-S1. On October 2, 1993, a lumbar myelogram and post-myelographic CT scan were performed which demonstrate a centrally protruding disc at L4-5 with mild impression on the thecal sac and no impingement on the exiting roots. The claimant was assigned a seven percent impairment rating pursuant to Table 49(II)(C) of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association for the L4-5 protrusion.

A letter from Dr. O dated September 30, 1993, reflects that he examined the claimant upon referral by Dr. L for complaints of back pain radiating into the groin, legs and toes. Dr. O wrote that after examination he could not find any focal motor, sensory or reflex abnormality. Upon completion of a work hardening program, a physical therapist wrote in a letter dated March 25, 1994, that the claimant was discharged with the capability of performing all his duties of a firefighter with safe body mechanics and smooth quality of movement.

A letter from Dr. L dated June 22, 1999, reflects that he treated the claimant on April 24, 1999, for low back pain in the same area as the injury of _____. Progress notes from this visit were not offered. An MRI dated April 29, 1999, demonstrates a clinical history of "low back pain radiating into both lower extremities. Back strain one week ago." The impression was "left posterolateral spondylosis at L5-S1 with moderate stenosis of the left neural forman [sic], disc desiccation at L4-L5 with mild loss of height. Broad based central posterior disc protrusion with moderate central compression of the thecal sac at L4-L5, and mild anterior disc bulging at L3-4." A subsequent letter dated December 9, 1999, from Dr. L relates that he referred the claimant to Dr. G for further treatment. Medical records from Dr. G were not offered.

A letter from Dr. Ga dated January 26, 2000, indicates that the claimant related a history of sustaining another work-related injury to his neck in 1994 after he returned to work from the _____, injury, which required a two-level anterior cervical fusion. The claimant apparently explained to Dr. Ga that the injury was incurred when he was pulling himself up into a truck. The claimant returned to full-duty work after four months. Dr. Ga wrote that "[i]n April 1999, [the claimant] was walking out of a house when he stepped down into a garage and felt a pulling and reinjured himself all over he says." Dr. Ga stated that he was requested to determine whether the present episode and the previous injury were related. After an examination Dr. Ga opined that "I would think that while the incident in 1993 may be a producing cause, that it is certainly only one of many producing causes and I cannot say more likely than not, that it is the producing cause. It is more likely than not in my opinion, that the patient's present impairment is related to degenerative joint disease, wear and tear of the lumbar spine, or at least 80-90% of it is in fact."

The claimant had the burden to prove that the compensable injury he sustained on _____, was a producing cause of his current condition after May 26, 1999. There may be more than one producing cause. Texas Workers' Compensation Commission Appeal No. 971839, decided October 23, 1997. The burden was on the self-insured to prove that the claimant's condition after May 26, 1999, was solely caused by an intervening injury on _____, if it desired to raise that defense. Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996.

The hearing officer found that the claimant's _____, injury contributed to his condition on and after May 26, 1999, as evidenced by the claimant continuing to feel pain between the two dates and by the fact that the MRI of 1993 and the MRI of 1999 both showed the claimant as having a disc protrusion at L4-5. The hearing officer apparently

believed that the self-insured did not sustain its burden of proving an intervening injury as the sole cause of the claimant's condition after May 26, 1999, as he did not make a finding to this effect.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Tommy W. Lueders
Appeals Judge