

## APPEAL NO. 002463

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 10, 2000. With respect to the single issue before him, the hearing officer determined that the bulging discs in the appellant's (claimant) cervical and thoracic spine are not a result of the compensable injury of \_\_\_\_\_. In his appeal, the claimant contends that the hearing officer erred in failing to "address whether there was any injury to the upper back and neck, such as sprain/strain and [temporomandibular joint syndrome] TMJ." In addition, the claimant argues that the hearing officer improperly required medical evidence of causation and that the determination that the claimant's compensable injury does not extend to the cervical and thoracic bulges is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, as the result of a severe blow to the right side of his face/head. The claimant testified that he developed neck pain immediately after the injury and the records from the emergency room where the claimant was taken shortly after the incident reflect complaints of neck pain. A July 14, 2000, cervical MRI revealed a central disc protrusion at C5-6, a right posterior disc protrusion at C3-4, and a posterior left disc protrusion at C7-T1. The claimant's treating doctor, Dr. M, a chiropractor, testified at the hearing that the severe blow to the claimant's head caused the disc bulges in the claimant's cervical and thoracic spine. The carrier had Dr. L examine the claimant. In a July 11, 2000, report, Dr. L stated "[i]t would not appear that [claimant] has anything other than a cervical strain but it is usually prudent to obtain a [MRI] scan." In an August 20, 2000, report, Dr. L stated that he had reviewed the claimant's cervical MRI and noted that it was probably "not a definitive study" and that the claimant "may well require a CT myelogram." Nevertheless, Dr. L concluded that he "did not see evidence of what I would consider to be an acute disc on this study."

At the hearing the parties stated that they had reached an agreement that the claimant's post-concussion syndrome and TMJ syndrome were a part of the compensable injury and thus, that the only remaining issue was whether the bulging discs in the cervical and thoracic spine were causally related to the compensable injury. At that point the hearing officer asked whether it would be better to frame the issue in terms of whether the claimant's compensable injury extended to a cervical and thoracic injury, as opposed to bulging cervical and thoracic discs. The attorney representing the claimant stated that it would be better to leave the issue as is because the dispute was not whether there was a strain/sprain injury but rather whether there was an injury to the body structure/discs. At that point, the carrier agreed that the nature of its dispute was whether the compensable injury caused the bulging discs and not whether there was a strain/sprain injury. In light

of this exchange, we find no merit in the assertion that the hearing officer erred in limiting his findings to the issue of whether there was a causal connection between the claimant's compensable injury and the bulging cervical and thoracic discs. To the contrary, the hearing officer properly resolved only the issue that both parties specifically asked him to resolve.

We likewise cannot agree that the hearing officer used an incorrect standard in this instance by requiring medical evidence of causation. In his decision the hearing officer stated that the "medical records negate causation." That reference does not demonstrate that the hearing officer improperly required medical evidence of causation in this instance. Rather, that comment is in the nature of an observation by the hearing officer as to the credibility of the medical evidence. Our review of the record does not reveal that the hearing officer applied an improper standard in this instance; thus, we dismiss the claimant's assertion of error in this regard.

Finally, the claimant argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. The claimant had the burden to prove that his compensable injury extended to the bulging discs in the cervical and thoracic spine. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides 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 this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving the causal connection between his compensable injury and the bulging discs. The hearing officer simply was not persuaded that the evidence presented by the claimant was sufficient to establish that causal relationship. The hearing officer was acting within his province as the fact finder in so finding. Our review of the record does not demonstrate that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge