

APPEAL NO. 002464

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 26, 2000. The issue at the CCH was whether the respondent's (claimant) compensable injury (a low back injury) extended to and included a cervical injury. The stipulated date of injury was _____.

The hearing officer held that the claimant sustained herniated cervical discs while lifting and carrying a water heater.

The appellant (carrier) appeals, arguing that the hearing officer has wholly ignored a report of a Texas Workers' Compensation Commission (Commission)-appointed required medical examination (RME) doctor, whose opinion about the causal connection of the neck injury to the basic injury had been sought. The claimant responds by reciting evidence in favor of the decision. The claimant notes that the mechanism of injury understood by the RME doctor was different from what actually occurred.

DECISION

Affirmed.

The claimant was employed by (employer) on _____, when he was involved in moving a water heater that had been installed the day before on a customer's location and was not suitable for the customer's use. The claimant said that it had to be picked up off a platform that was raised about 16-18 inches off the floor. He said that the crew was in a hurry and did not drain all the water out of the water heater. He and his coworker were in a confined closet-like area, and the claimant at one point was bearing the entire weight of the water heater because his coworker lost his firm grip. He said that when the heater became unsteady, his head was knocked back. To very greatly summarize, most of his treatment, including surgery, was focused on his lumbar spine. However, earlier reports of neck pain and a stiff neck were made close to the time of injury. The claimant was subsequently found, upon continuing complaints of neck pain, to have two herniated discs in his neck.

The medical evidence is conflicting. The carrier asserts that the hearing officer ignored the report of an RME doctor, Dr. B, who was appointed by the Commission to opine about the causal connection of the neck. Dr. B indeed indicated that herniations could be asymptomatic and present in much of the population, and further that the mechanism of injury as he understood it would not have resulted in cervical injury, although a lumbar injury would result. Dr. B indicates an understanding of a lifting injury, and did not apparently understand that the claimant's head was knocked back in the process, as he testified. While we would agree that the report of a Commission-appointed RME doctor should not be ignored, the hearing officer can still weigh that report by considering the facts known to the doctor upon which his opinion is based.

This case presents the classic "conflicting evidence" scenario which we have repeatedly stated is the role of the trier of fact to weigh and reconcile. Section 410.165. That the evidence suggests other, perhaps more plausible, inferences does not itself constitute the basis for reversal by an appellate body. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge