

APPEAL NO. 002466

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 September 25, 2000. With regard to the only issue before her, the hearing officer determined that the respondent (claimant) sustained a compensable low back injury in addition to the compensable right hip injury on _____ (all dates are 2000 unless otherwise noted).

The appellant (carrier) appealed, citing inconsistencies in the claimant's testimony and the medical histories in some of the medical reports. The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a laborer removing asbestos from some pipes at a plant. The claimant testified through a translator how he had thrown some bags onto a platform and then hit his right hip on the metal platform rail. In evidence are photographs of the work site and the claimant demonstrated how he was injured. The parties stipulated that the claimant sustained a compensable right hip injury on _____.

The claimant reported the incident the same day and was sent to Dr. P the next day, April 12. Dr. P, in a report of that date, noted a history consistent with the claimant's testimony and back complaints, and ordered an MRI. The claimant was next seen by Dr. K, who noted a history that "a piece of metal hit [the claimant] in the right side." Dr. K found the injury "consistent with a lumbar disc herniation" and noted the MRI showed a "herniated disc at L4-L5." Other doctors have different histories. Dr. C did a record review and in a report dated August 28 was of the opinion that hitting a hip on a handrail is inconsistent with a herniation which typically "is caused by an axial load or torsion type force."

In any event, the evidence is conflicting both on the mechanism of the injury and whether the compensable right hip injury also included the herniated disc. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge