

APPEAL NO. 002608

Following a contested case hearing held on October 9, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the compensable injury which the appellant (claimant) sustained to his thoracic spine on _____, does not extend to and include his lumbar spine and that he has not had disability from February 9, 2000, through the hearing date from the compensable thoracic spine injury. The claimant has appealed, asserting that his medical evidence established that the work-related lumbar spine injury he sustained in _____ was aggravated by the _____, injury sustained when he picked up a heavy tray of tools and started to turn with it. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged factual findings and legal conclusions, noting that the claimant had been receiving intermittent treatment for his 1990 lumbar spine injury at the expense of another insurance carrier.

DECISION

Affirmed.

The claimant testified that his treating doctor, Dr. K, who as recently as October 1999 gave him an epidural steroid injection for his low back and who is recommending lumbar spine surgery, told him that the _____, injury is "the major cause it," referring to his current low back condition, and that Dr. F, a required medical examination doctor appointed by the Texas Workers' Compensation Commission, agrees with Dr. K that his _____ injury is "the cause." The claimant maintained that the lumbar spine disc fragment found during recent testing is new since the earlier injury, inferring that it was caused by the _____ injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.65(a). The hearing officer notes that Dr. K's records reflect that the claimant was complaining of mid-back pain after the _____, incident, a spinal region not previously injured; that Dr. F's opinion on the relationship of the _____ incident to the current lumbar spine condition was based on the inaccurate history he was given; and that it was the claimant's severe pain from his lumbar spine and not the symptoms from his thoracic spine injury that has prevented him from working since February 9, 2000. We are satisfied that the challenged factual findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge