

APPEAL NO. 002664

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 25, 2000. The hearing officer resolved the sole disputed issue by concluding that the respondent's (claimant) compensable injury of March 23, 2000, is a producing cause of his avascular necrosis (AVN) of the right hip. The appellant (carrier), which accepted "hip and right leg injuries," asserts on appeal that the hearing officer's determination lacks sufficient support in the medical evidence in that the hearing officer relies primarily on the testimony of the claimant's treating doctor and that to accept that the claimant could progress to Stage III AVN in a matter of a few weeks defies credulity. The claimant's response urges that the evidence is sufficient to warrant affirmance, pointing to the opinion of an orthopedic specialist to whom the claimant was referred.

DECISION

Affirmed.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), as he stepped off the back of a garbage truck onto his right foot, that foot slipped forward on grease and he fell, ending up with his left leg behind him and his right leg in front of him, in a "splits" position. He said he had severe right hip pain the next day and the employer sent him to a (clinic) where x-rays were taken, he was diagnosed with right hip strain, and he was started on a course of physical therapy, most of which worsened his hip pain. He said he changed treating doctors to Dr. MM, a chiropractor; that Dr. MM obtained new x-rays, told him he had a serious problem in his right hip, and referred him to an orthopedic center; and that he was seen by Dr. MB who diagnosed AVN and told him he will need a hip replacement. He also said he was examined by Dr. O, a required medical examination doctor, and that he had never had any problem with his right hip before the accident and had not previously had steroid injections.

Dr. MM testified that he reviewed the clinic's March 24 x-rays as well as the x-rays he obtained on April 7 when he first saw the claimant and that the latter showed that the AVN had "progressed" and "advanced" from March 24. According to Dr. MM, Dr. MB advised him that the claimant had not had prior hip pain or pathology, that AVN can be caused by alcoholism and by steroids as well as by trauma, and that it was his opinion that the claimant's AVN resulted from the accident on the job. Dr. MM further stated that the claimant did not have a history of having had steroid injections and, to his knowledge, was not an alcoholic. Dr. MM further testified that he learned from his medical research that AVN on just one side of the body is more likely trauma-induced and that, in his opinion, when the claimant "did the splits," the femoral artery was disrupted and the ensuing lack of blood supply to the femoral head led to the rapid progression of the AVN.

Dr. MB wrote on April 26 that the claimant had no risk factors for AVN and was asymptomatic and working very heavy labor before his _____ injury. He said he

could draw no other conclusion but that the claimant's symptoms and findings are related to his on-the-job injury.

The April 24 review report of Dr. M states the claimant's history as "stepping down off a garbage truck" and also states that there was no specific traumatic event reported. Dr. M concludes that in the absence of severe trauma, which would induce dislocation and/or fracture, the AVN is highly unlikely to be related to the claimant's work activities. The August 3 peer review report of Dr. KB concludes that the AVN was not caused by the claimant's on-the-job injury.

Dr. O's August 31 report to the Texas Workers' Compensation Commission states that he believes that the AVN of the right hip was well on its way prior to the accident at work and that the accident caused the aggravation of the AVN. In a later deposition Dr. O stated that it is not clear whether the pathology caused the event or the event caused the pathology.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate-reviewing tribunal, the Appeals Panel will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. 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 hearing officer had sufficient medical evidence to support her findings.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge