

APPEAL NO. 010875
FILED JUNE 7, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 13, 2001. The hearing officer determined that the appellant's (claimant) lipoma (a fatty tumor) did not result from the claimant's compensable injury of _____, and that the claimant's disc bulging at L4-5 and L5-S1 did result from that injury. The claimant appeals the adverse determination relating to the lipoma, asserting that it is against the great weight of the evidence. He also asserts error in the hearing officer's admission of the respondent's (carrier) exhibit, Carrier's Exhibit No. 2 and the testimony of Dr. T.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's lipoma did not result from the compensable injury of _____, when he slipped on a wet floor at work and fell on his back. The claimant's treating doctor, Dr. B, testified that in his opinion the lipoma, a growth around nerves in the area of T12-L1, resulted from the flexion in the claimant's spine when he fell, the same mechanism that resulted in the disc bulging at L4-5 and L5-S1. He based his opinion on information he had gleaned from a treatise entitled "The Spine." He also stated that Dr. G and Dr. M, both of whom had seen the claimant, agreed with him. Dr. T, who reviewed the claimant's records and issued a peer review report, testified that lipomas are quite rare and can be congenital; that inception time of lipomas cannot be determined; that lipomas are known to grow in time; that lipomas are usually discovered incidentally in the testing of persons being worked up for some other condition; and that it would be speculation to state that the inception or growth of a lipoma was induced by trauma. Her report reflected that the claimant's lipoma is attached to his spinal cord and may be congenital. In her opinion, to a reasonable medical probability, based upon her experience with several other cases of lipoma, her review of the claimant's medical records, her research of the literature, and her consultation with other doctors, the claimant's lipoma did not result from his fall at work. In his report of October 10, 2000, Dr. D, who examined the claimant, opined that the lumbar lipoma was preexisting and unrelated to the work injury. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). The Appeals Panel, an appellate reviewing-tribunal, 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 did not commit reversible error in admitting the March 1, 2001, addendum to Dr. T's report and in allowing her to testify. The claimant objected to the admission of the addendum to Dr. T's peer review report because, unlike Dr. T's original report, it was not timely exchanged. The claimant also objected to the admission of testimony from Dr. T on the grounds that her identity as a witness had not been timely disclosed. The carrier explained that Dr. T did not respond to certain questions posed by the adjuster, after the benefit review conference, until March 1, 2001, and that the addendum was faxed to the claimant immediately upon receipt by the carrier. The carrier also stated that Dr. T would be testifying to the matters in the addendum. The hearing officer determined that the identity of Dr. T as a witness had been timely disclosed and that good cause existed to admit the addendum to her report. We are satisfied that the hearing officer did not abuse his discretion in allowing Dr. T to testify and in admitting the addendum to her report.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge