

APPEAL NO. 011795
FILED SEPTEMBER 19, 2001

Following a contested case hearing held on July 12, 2001, 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 respondent's (claimant) compensable injury of _____, does include injuries to the C3-4 level of the cervical spine but not to the C6-7 level. The appellant (carrier) asserts on appeal that the claimant's medical evidence was insufficient to prove that the C6-7 level condition naturally flowed from the compensable injury, stipulated as an injury to the C4-5 and C5-6 levels. The claimant's response urges the sufficiency of the evidence to support an affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while pulling on a chain hoist lifting a 2,500-pound object, he felt pain in his neck and down his right arm, into his hand; that he underwent cervical spine discectomy and fusion surgery at the C4-5 and C5-6 levels on July 14, 1998, by Dr. S; that he returned to work, initially at light duty and later at full duty; that by the fall of 2000 he was having further neck and shoulder pain which increased to the point that could take it no longer and he returned to Dr. S on November 2, 2000, and was taken off work; and that he is scheduled to undergo additional cervical spine surgery. The claimant also stated that two doctors told him that a fused portion of the spine can put pressure on and injure the adjoining levels. Diagnostic tests in April 1998 revealed broad-based posterior annular bulging at the C3-4 level and an MRI on November 17, 2000, revealed a herniated disc at that level.

Dr. S's December 15, 2000, report states that although the claimant had some discal bulging at the C3-4 level at the time of the work-related injury, it was not felt appropriate to treat it at that time; that the claimant "wishes this to be considered as part of his previous workmen's comp case"; and that "one can argue in favor of that from the standpoint of the pre-existing presence of this abnormality during his former active case as well as the fact that the treatment of C4-5-6 fusion could potentially lead to an exacerbation of problems at the junctional areas." On January 22, 2001, Dr. S iterated that the claimant had abnormalities at C3-4 at the time of his original surgery "and certainly on the basis of his surgical procedure for his work-related injury, the [claimant] could have junctional progression of disease that would not have occurred otherwise." Dr. WS reported on April 27, 2001, that "in all medical probability, had [the claimant] not undergone the two level fusion, the C3-4 and C5-6 levels would not have degenerated at the accelerated rate to their current status; although some degeneration would have occurred with or without the surgery."

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 carrier argues that the hearing officer must have applied the “but for” standard instead of the “naturally flowing” standard and that the medical evidence supporting the claimant’s position did not meet the standard of “reasonable medical probability.” However, we are satisfied that the challenged factual determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (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.

The true corporate name of the insurance carrier is **EMPLOYERS GENERAL INSURANCE GROUP, INC.** and the name and address of its registered agent for service of process is

**ROBERT RAMSOWER
1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75201**

Philip F. O’Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge