APPEAL NO. 011836
FILED SEPTEMBER 24, 2001

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 July 16, 2001. The hearing was held jointly with Docket No. _____. The hearing officer determined that the respondent's (claimant) compensable low back injury of _____, is not a producing cause of the medical condition of his low back since _____.

In its appeal, the appellant (carrier) challenges the finding of fact that "on and after _____, the medical condition of the claimant's low back was caused solely by a lumbar spine injury which so aggravated his degenerative changes in his lumbar spine that it constituted a new injury." The carrier contends that the claimant's current back problems are due to the staph infection the claimant had in 1999 which was not work related, the aging process, degenerative spinal stenosis, and claimant's prior diskitis of 1999, and not the result of a specific incident which occurred on _____. The carrier argues that both the medical evidence and the testimony presented at the hearing support the finding of the hearing officer.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant fell from his truck and sustained a compensable injury to his low back area, and, further, that he reached maximum medical improvement for the injury on June 25, 1996, with a seven percent impairment rating. The medical records reflect that the claimant was hospitalized on February 28, 1999, because of pneumonia and was subsequently found to have a staph infection. At this time he also received treatment for a torn rotator cuff. The claimant was readmitted to the hospital in May of 1999 for back pain, which was diagnosed as diskitis secondary to the staph infection. The claimant testified that on _____, while he was driving a truck to city 1 for his employer, he leaned over to shift gears and got a sharp pain in his lower back. The claimant testified that he has been unable to work since _____.

The medical records support the claimant's position that he fully recovered from his 1995 injury. In a letter dated June 25, 1996, Dr. N, the neurosurgeon that treated the claimant for his 1995 injury, stated that at that time the claimant had "no symptoms, except some residual mild numbness of the big toe on the right." The claimant testified at the hearing that he completely recovered from his 1995 injury, and it is undisputed that the claimant returned to work at full duty in April of 1996.

Dr. B was the physician the claimant initially saw after his injury of _____. Dr. B stated in an office note dated November 10, 2000, "I cannot relate this to his [claimant's] first injury." Dr. B also reported in the same note that "this appears to be a mechanical problem, a new problem." Dr. T, the physician who performed the carrier-required medical

examination, completed an evaluation report dated February 15, 2001. After reviewing the claimant's extensive medical records, taking a patient history, and performing an examination, Dr. T concluded in his evaluation report that "although his [claimant's] degenerative condition in the lumbar spine was not totally created by the workplace event that occurred _____, it appears that there was a significant enough clinical change in the spinal condition that created his present low back pain." Dr. T also concluded that neither the claimant's diabetes nor the infection the claimant suffered in 1999 appeared to create his current back pain. Further, Dr. T agreed that surgery was necessary. The peer review completed by Dr. TN found little evidence in the record to support that the claimant's current injury "has any remote relationship to his 1995 compensation claim." Dr. TN went on to state that the claimant's 1995 compensable injury resolved without incident.

There are medical records in evidence that indicate that the claimant's current back pain is related to his injury of 1995 or was caused in part by claimant's other health problems. However, 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 of 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co.,15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge