APPEAL NO. 011973
FILED OCTOBER 2, 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 18, 2001. The hearing officer determined that the appellant's (claimant) compensable (right knee) injury did not include a low back injury.

The claimant appeals, asserting that a prior back injury had not occurred in 1998, referencing certain medical reports, and contending that she sustained a low back injury in addition to a right knee injury on _____. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a sales agent, and it is undisputed that she sustained a compensable injury on _____, when she stepped out of her truck and twisted her knee. In dispute is whether the claimant also twisted her back and sustained a low back injury in that incident. The claimant testified that she did not have back pain at that time but did have radiating right leg pain. The carrier accepted liability for a right knee and leg injury. The claimant initially saw her family doctor and was referred to Dr. E, an orthopedic surgeon, who treated the claimant for her knee injury for a period of time. Dr. E subsequently referred the claimant to Dr. G for pain management. Dr. G, in a report dated April 4, 2000, commented on the claimant's leg/knee injury and suggested "the possibility of reflex sympathetic dystrophy [RSD] as being a part of her symptom complex." The claimant was also examined by Dr. W, a carrier-required medical examination doctor, who, in a report dated August 9, 2000, only referenced the claimant's right knee and leg complaints. Dr. W did comment that the claimant "has a lumbar sympathetic block scheduled to be done August 9, 2000, because of the diagnosis of [RSD]." The claimant testified that she began noticing back pain after the lumbar sympathetic block, and the medical reports after August 9, 2000, began referencing back complaints, including an impairment rating evaluation dated October 27, 2000, by Dr. WG. An MRI performed on November 22, 2000, showed some "disc degenerative changes with disc bulging [at] L4-5 and L5-S1." In a report dated December 8, 2000, Dr. D, the designated doctor, found the claimant not yet at MMI.

In a note dated January 12, 2001, Dr. E commented, "In view of the 7 mon [illegible] time span from [claimant's] knee injury to onset of back pain and her prior 10/98 low back injury, I believe it is unlikely the [claimant's] back pain is causally related to her injury of 1/12/2000." This information was sent to Dr. D, who responded by saying that he had reviewed Dr. E's note and he "would concur with [Dr. E] that [claimant's] current back problem is unrelated to the injury of _____." The claimant began treating with Dr. M on January 30, 2001, who was of the opinion that the claimant's back condition was

related to the compensable injury based on a history that the claimant twisted her back at the time of the injury on _____.

The hearing officer commented:

> [Claimant] did not have any back pain until she had the sympathetic block in August 2000. The MRI in November 2000 was read by [Dr. D] as disc degeneration with some bulging at L4/L5 and L5/S1. Claimant's treating doctor for this injury concluded that her back condition was not causally related to the compensable injury. [Dr. M] did not start treating the Claimant until a year after the incident. His history reflected that the claimant twisted her back at the time of the injury and immediately started having low back pain that progressively got worse. That was different from the history provided from the other doctors that had seen the Claimant as well as the Claimant's own testimony at the hearing.

There was conflicting evidence submitted on the disputed issue. 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determination is 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate

name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge