

APPEAL NO. 012122
FILED OCTOBER 16, 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 (CCH) was held on August 15, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable lower back injury on _____; that the claimant gave timely notice of his injury to the employer; and that the claimant had disability from September 26, 2000, to the date of the CCH.

The appellant (carrier) appeals, contending that the claimant's current back problems are a continuation of the claimant's 1999 back injury. The carrier also generally appeals the other adverse findings. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable low back injury on _____; that the claimant had surgery for that injury on November 8, 1999; that the claimant was determined to be at maximum medical improvement for that injury on May 19, 2000, with a 12% impairment rating; and that the claimant returned to work on June 25 or 26, 2000. Whether the claimant returned to light duty as ordered by his doctor or regular duty is disputed. The claimant continued to have problems from his 1999 injury and was scheduled for regular monthly check-ups. The claimant had a checkup visit scheduled for _____.

The claimant testified that on the morning of _____, he felt pain in his back shoveling metal shavings with a pitchfork. It is undisputed that the claimant told the assistant foreman, Mr. A that his back hurt (but not that he was claiming a new injury) and that he was going to the doctor. The claimant testified that when he returned from the doctor on _____, he gave the doctor's note to the supervisor/foreman, Mr. M, and reported a new injury. Exactly what was said and what Mr. M did with the doctor's office note is disputed. The claimant continued to work that day and continued to work until September 25, 2000, when the doctor took him off work. The claimant eventually had additional back surgery on July 19, 2001.

The claimant's treating doctor is Dr. S, whose office notes of the _____, visit only note continued pain and releases the claimant back to light duty. The claimant had had an MRI performed in July 1999 and Dr. S ordered a second MRI, which was performed on August 22, 2000. The August 2000 MRI showed postoperative changes at L4-5 with "a recurrent or residual left paramedian disc protrusion with some enhancement of the protrusion." Subsequent reports from Dr. S and Dr. F, a neurosurgical consultant, recite

a history that the claimant reinjured himself “when he again lifted something and hurt his back.” There is no medical evidence to the contrary.

Whether a claimant sustained a new injury or merely suffered a continuation of an original injury is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 000670, decided May 17, 2000. The evidence on this point was subject to differing interpretations. Regarding the disputed issues of whether the claimant sustained a new injury on _____; whether the claimant reported a new injury to Mr. M on that date; and disability, if any, 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. 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 determinations are so against the great weight 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 **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge