

APPEAL NO. 020449
FILED APRIL 1, 2002

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 January 15, 2002. The hearing officer determined that the compensable injury extends to and includes a cervical injury and lumbar disc herniations at L4-5 and L5-S1.

The appellant (carrier) appeals, asserting error in the hearing officer's exclusion of some of the carrier's exhibits offered to "develop a complete record" and contending that the claimant's medical problems were preexisting and unrelated to the compensable injury. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant was involved in a serious motor vehicle accident (MVA) in 1996 and has had continuing neck, shoulder, and back complaints from that accident. On _____, the claimant was preparing a food demonstration in a grocery store when she slipped and fell on some broccoli, landing on the concrete floor. The carrier has accepted liability for a lumbar strain. MRIs (of the low back) were performed both in 1997 and 1998 (as a result of the 1996 MVA) and after the compensable injury of _____. Dr. M, the treating doctor, an orthopedic specialist, in reports dated January 19 and February 17, 2001, compared the claimant's old MRIs with new post-_____, studies and was of the opinion that preexisting herniations are "increased in size compared to her prior films." Dr. M states that he considers the claimant's "lumbar findings an aggravation of her prior problem." A cervical MRI shows herniations at C6-7 and C5-6. The carrier offers two peer review reports and a medical report from Dr. H, a neurologist, which indicate that the claimant's cervical and lumbar spine conditions are "not compensable," are primarily related to the 1996 MVA, and subsequent chronic pain syndrome or an arthritis condition. In short, the medical evidence was conflicting. The hearing officer commented that the peer review reports "were not compelling or dispositive," compared the reports of Dr. M and Dr. H and concluded that "the more credible medical evidence indicates that the Claimant's neck and lumbar disc herniations . . . were caused or aggravated by her compensable injury" That determination is supported by the medical evidence, including the reports of Dr. M.

The carrier initially offered a stack of some 142 pages of documents which the hearing officer required the carrier to pare down to seven exhibits containing 36 pages. In addition, the hearing officer, on more than one occasion, asked the carrier's attorney to point out anything probative in the excluded 100-plus pages. Our review of the excluded documents includes some 84 pages of pre-December 1999 medical documents related to the 1996 MVA, including a psychiatric report, with the additional 20 or so pages, consisting of an October 20, 2000, psychological evaluation, another April 2000 peer review by a

chiropractor, three Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) forms, and a wage statement. The carrier, in its appeal, does not point to any of the documents as having a bearing on the case and just generally argues that it was not allowed to “build a complete record.” We hold that the hearing officer did not abuse his discretion in excluding the offered documents, particularly where he requested the carrier's attorney to identify how those documents were probative and not cumulative to the issue at hand.

The carrier, in its appeal, points out some inconsistencies and contradictions in the medical records; however, it is the responsibility of the hearing officer to resolve those inconsistencies and conflicts in the evidence. Section 410.165(a) and Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not 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).

Accordingly, the hearing officer's decision and order are affirmed.

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

BOB KNOWLES
5205 NORTH O'CONNOR BLVD.
IRVING, TEXAS 75039.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge