

APPEAL NO. 020635
FILED APRIL 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 11, 2002, in (city 1), the hearing officer determined that the injury the appellant (claimant) sustained on _____, does not extend to myofascial pain syndrome (MPS) and that the claimant had disability from _____, through January 22, 2001, but not from January 23, 2001, through the date of the hearing. The claimant has appealed on evidentiary grounds, asserting in particular that the hearing officer has misstated some of the evidence and has ignored the medical evidence including the specific opinions of Dr. D, who examined the claimant at the request of the Texas Workers' Compensation Commission. The respondent (carrier) urges our affirmance, pointing out that the claimant fails to show how the two misstatements of evidence resulted in an erroneous decision and that the hearing officer could properly consider the lengthy periods of time the claimant did not seek medical treatment, the dependency of Dr. D's opinions upon the reliability of the medical history provided by the claimant, and her assessment of the claimant's credibility.

DECISION

Affirmed.

The claimant testified that her left leg and hip were injured in a motor vehicle accident (MVA) which occurred on _____. The evidence indicated that she was driving a van for the employer which skidded on an icy patch and flipped over. Dr. D's report reflects that the van flipped over on its right side with the claimant hanging from her seatbelt. The parties stipulated that the claimant sustained a left leg and left hip injury on that date. The parties also entered into a Benefit Dispute Agreement (TWCC-24) on October 19, 2001, that the compensable injury does not extend to the lumbar spine. A benefit review officer (BRO) signed an Interlocutory Order on December 14, 2001, requiring the carrier to pay temporary income benefits (TIBs) from May 19, 2001, to "the present." Another BRO entered an order on March 22, 2001, ordering the payment of TIBs from that date to May 18, 2001.

The claimant testified that she was x-rayed on _____, at an emergency room (ER) and was told to take Ibuprofen and go home; that although she was told at another ER the next day that she could return to work, she was so sore she could hardly walk; and that her employment was terminated on December 29, 2000, because of the MVA. She further stated that she commenced chiropractic treatment in (city 2) with Dr. MC on January 8, 2001; that she did not receive medical treatment between January 22 and May 31, 2001, for a variety of reasons, including lack of funds and not wanting to fall in public; that she began to experience spontaneous falls in February 2001, due to the numbness and tingling in her left leg; that she moved from city 2 to city 1 in March 2001; and that after seeing Dr. MC again on May 31, 2001, she did not receive medical treatment

until September 14, 2001, when she commenced chiropractic treatment with Dr. G in city 2. The claimant contended that her pattern of spontaneous falls, caused by her left leg numbness, are what has kept her from working.

Dr. D's report of November 13, 2001, states that he reviewed the claimant's medical records and examined her and that his impression is left hip and buttocks contusion with the development of left piriformis MPS causing referred left proximal thigh pain. Dr. D reported that Dr. MC diagnosed the MPS. Dr. MC's January 22, 2001, report reflects that he also diagnosed "lumbar disc lesion, lumbosacral sprain/strain, myofasciitis," and "R/O post traumatic stress disorder." Dr. D further reported that Dr. M diagnosed lumbar disc disease and a possible left inguinal hernia; and that Dr. G diagnosed piriformis muscle syndrome. Dr. D opined that the claimant has, primarily, a soft tissue MPS "most definitely" caused by the MVA and that she has had disability from _____, to the present. The hearing officer found that the claimant does not have MPS as a result of the _____, injury and that she had disability from _____, through January 22, 2001, but has not had disability since that date.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). The hearing officer explains in some detail why she rejected the opinion of Dr. D and why she found the medical evidence of a causal connection between the MPS and the compensable injury lacking. As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); 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 **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I agree with the claimant's challenge that the hearing officer misstated some evidence and ignored the medical evidence. I would have reversed and rendered the opinion that the claimant met her burden of proof on the extent-of-injury issue and that the great weight and preponderance of the evidence was counter to the hearing officer's determination.

Conversely, and in line with Honorable Judges O'Neill and Kelley, I would have affirmed the disability determination, as it could have been supported by the record.

Terri Kay Oliver
Appeals Judge