

APPEAL NO. 021222
FILED JUNE 20, 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 April 15, 2002, the hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, extends to and includes herniations at the L3-4, L4-5, and L5-S1 levels of the lumbar spine. The appellant (carrier) has appealed this determination on the grounds of evidentiary insufficiency. The claimant's response urges the sufficiency of the evidence to warrant our affirmance.

DECISION

Affirmed.

The claimant testified that on _____, the truck he was driving for the employer slid off the road and flipped over and that he was ejected through the windshield and taken to an emergency room where he was treated and released. The parties stipulated that the claimant sustained a compensable injury on that date. The claimant further stated that he had two lumbar spine operations, in 1993 and 1994, at the L4-5 and L5-S1 levels, and that the Texas Workers' Compensation Commission (Commission) has approved further spinal surgery for herniated discs at the L3-4, L4-5, and L5-S1 levels. The claimant's expert witness, Dr. D, an orthopedic surgeon who had examined the claimant several times after the accident, testified that the herniations of the discs at L4-5 and L5-S1 had been repaired by the previous operations and that the twisting and turning of the spine during the ejection event caused the herniations present at those levels and aggravated the preexisting defect at the L3-4 level. Dr. B, a neurosurgeon who testified for the carrier after reviewing the claimant's medical records, maintained that the accident had no effect on the claimant's medical condition and that it was "absurd" for Dr. D to opine that the three lumbar discs were simultaneously ruptured.

Whether the stipulated injury extends to the lumbar spine defects was a question of fact for the hearing officer to decide and in his discussion of the evidence he sets out in some detail the factors which caused him to find the opinion of Dr. D the more credible. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W. 2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W. 2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W. 2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge