APPEAL NO. 021724
FILED AUGUST 14, 2002

This case returns to us following our remand for compliance with HB 2600, which amended the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.164 concerning certain required information about the respondent (self-insured). Texas Workers' Compensation Commission Appeal No. 020953, decided May 29, 2002. No remand hearing was held by the hearing officer who, on June 7, 2002, issued a Decision and Order on Remand, which adopted and incorporated her prior Decision and Order of March 21, 2002, concluding that the appellant (claimant) did not sustain a compensable injury on _____, and therefore did not have disability. The claimant again appeals these determinations on evidentiary grounds. She contends that the hearing officer's unappealed finding that the claimant, on _____, felt a "pop" in her back while cleaning a cage and reaching for cat litter compels a finding that she must have sustained an injury, that is, damage or harm to the physical structure of her body. The self-insured has filed a response urging the sufficiency of the evidence to support the challenged findings.

DECISION

Affirmed.

The claimant testified that on _____, while working as a pet adoption clerk at the self-insured's animal control facility, she was squatting down cleaning a cat cage, and that when she turned to pick up a litter box and turned back again, she felt an excruciating pain in her low back which radiated down her right leg. She conceded that her back was strained on _____, when a large Rottweiler jumped on her in its cage, but denied having stated to others that, on the weekend before _____, she hurt her back while moving a boat she had purchased. She did state that she helped repair a flat tire on the boat trailer by jacking the trailer up and down. She also conceded having undergone a number of chiropractic treatments for her low back pain in the weeks prior to _____. The self-insured presented testimony from three witnesses, and the written statements of those witnesses and others which, in certain particulars, contradicted the claimant's testimony concerning the possibility of having hurt her back jacking up the boat trailer or whether she hurt her back at home. The claimant challenges findings that she "confirmed to [Ms. F], by telephone, on _____ that [she] had not hurt herself at work, explaining that she hurt herself at home," and that "[t]he popping of Claimant's back on _____ did not cause harm to Claimant's body and did not result in any injury."

Notwithstanding the substantial conflicts and inconsistencies in the evidence, much of which was developed in the claimant's cross-examination, the hearing officer does not comment on the credibility of the claimant's evidence, including her testimony. Given the state of the evidence, the hearing officer could have elected not to believe the

claimant's testimony that the incident of _____, as she described it, actually occurred. However, the claimant contends that, since the hearing officer specifically found that the claimant "felt a pop in her back" when cleaning a cage and reaching for cat litter on _____, the hearing officer was necessarily compelled to find that such "pop" caused damage or harm to the physical structure of the claimant's back (Section 401.011(26)), particularly in view of the claimant's unrefuted testimony about the severe pain which immediately ensued.

It is somewhat problematic for the hearing officer to find that the "pop" actually occurred in the circumstances the claimant described and yet find that the "popping" did not cause harm to her body, notwithstanding the evidence that the claimant was in pain at work at the time of the claimed incident. However, we observe that the terms "pop" and "popping," commonly used by lay persons in describing spinal injuries, are not medical terms and are not listed in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (28th ed. 1994). The hearing officer could reasonably infer from the evidence that the popping and ensuing pain, assuming she believed the testimony about the ensuing pain, was a flare-up of a low back injury sustained while jacking up the boat trailer or sustained at home. 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Further, the trier of fact may believe all, part, or none of any witness' testimony (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and the testimony of a claimant as an interested party only raises issues of fact for the hearing officer to resolve (Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ)). We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

BG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

CONCURRING OPINION:

I concur with the majority in this case, but write separately because this case illustrates a recurring problem with many of the hearing officer's decisions we review. We presume that the hearing officers know the law. However, it is certainly easier to indulge that presumption when the hearing officer's decision shows some familiarity with the legal concepts that underlie the case in controversy. To decide the present case in the fashion the hearing officer did here, without touching on the doctrines of aggravation and sole cause, leaves the hearing officer's rationale less than clear. As a result, the author judge has gone to great lengths to provide a rationale to support the decision of the hearing officer. It would be far more appropriate for the hearing officer to provide a rationale rather than to leave it to the Appeals Panel to conjecture one.

_____
Gary L. Kilgore
Appeals Judge