APPEAL NO. 022269
FILED OCTOBER 17, 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 August 14, 2002. The hearing officer determined that the respondent's (claimant) compensable injury sustained on _____, extends to and includes avascular necrosis (AVN) of the right hip with a large subchondral fracture. The appellant (carrier) appeals the extent-of-injury determination on evidentiary sufficiency grounds. Our file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was working on a construction job in another state, putting in 10 to 12 hours a day, either six or seven days per week. His injuries occurred on _____, when he fell approximately ten feet from a ladder, sustaining bilateral wrist fractures and a facial laceration. He was treated at an emergency room, with his right wrist put in a cast and his left wrist splinted. There is no mention in the initial medical records of an injury to or pain in the right hip area. Unable to continue working, the claimant returned to his home in this state. He testified that on the several-day-long bus trip home, he felt increasing pain in his right hip, and that both he and his wife observed a large dark bruise on his right buttock and hip. The first mention of right leg pain in the medical records is found in the June 27, 2001, consultation with Dr. M. Dr. M sent the claimant for an MRI of the right upper leg/thigh on June 29, 2001, which was described as normal. The doctor reading the MRI noted that the hip area was not totally included and stated: "If there is right hip pain, a right hip MRI is recommended since there is suggestion of right hip effusion." By October 22, 2001, the claimant was referred to Dr. H, an orthopedic surgeon, who reported in his initial medical report that the claimant had "stage 4 [AVN] present in the right hip with a large subchondral fracture." Dr. H opined that "it does appear that the patient's symptomatology and injury to his hip occurred as a result of his work-related accident." In a subsequent medical report dated November 19, 2001, Dr. H stated that the claimant's "very severe [AVN]" was "aggravated from his accident in this right hip." By the time of his February 18, 2002, examination, Dr. H noted that his "X-rays show collapse of the femoral head." An MRI was conducted on March 28, 2002, and is discussed by the peer review doctor, Dr. T, as showing "complete collapse of the femoral head on both the right and left hips." Dr. T opined that AVN is an ordinary disease of life, that the MRI of June 29, 2001, showed "good intimation . . . that it is already there just sub clinical," and that this "would be impossible to be a cause and effect relationship." Dr. R, a carrier required medical examination doctor, and Dr. C, another peer review doctor, did not offer opinion on whether the AVN was included in the compensable injury. The Texas Workers' Compensation Commission-selected designated doctor, Dr. L, gave a diagnosis of "[AVN] of the left [sic-right] hip, which was aggravated by the injury."

It is clear from the Statement of the Evidence that the hearing officer was persuaded that the claimant's condition to his right hip was aggravated by his fall. In Texas Workers' Compensation Commission Appeal No. 001825, decided September 12, 2000, we discussed AVN and aggravation:

> The Appeals Panel has stated that the etiology or aggravation of AVN is not a matter of common experience and must be proven through expert medical testimony that rises to the level of reasonable medical probability. Texas Workers' Compensation Commission Appeal No. 960678, decided May 17, 1996 (Unpublished) (hearing officer's determination that a strain did not give rise to AVN affirmed). Medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. *See* Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993. Lay testimony is not sufficient evidence of causation of this disease. A review of Appeals Panel decisions shows that generally cases where aggravation of AVN has been found involve a blow or a fall: [citations omitted]; a sudden twist: [citations omitted]; or lifting and a popping sensation: [citations omitted].
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> When an injury is asserted to have occurred by way of "aggravation" of a preexisting condition, there must be evidence that there was a preexisting condition and that there was "some enhancement, acceleration, or worsening of the underlying condition. . . ." Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The burden of proving that there is a compensable injury or aggravation of a preexisting condition is on the claimant.

The evidence is sufficient to support the hearing officer's determination that the claimant's condition was aggravated by the fall on _____. The hearing officer found the claimant's testimony to be credible and reasonable. His AVN condition, which apparently preexisted the fall, was asymptomatic before the fall, according to the claimant's testimony concerning the hours he was able to work. After the fall, he was found to have the "large subchondral fracture" of the right hip and the subsequent "complete collapse of the femoral head on both the right and left hips," and was unable to work.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end,

the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge