APPEAL NO. 030070
FILED FEBRUARY 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on November 20, 2002.

In (Docket 1), the hearing officer determined that the compensable injury of (date of injury for Docket No. 1), includes an injury to the cervical area in the form of a C6-7 disc protrusion and that the respondent's (claimant) current cervical condition and need for medical treatment is a direct and natural result of the (date of injury for Docket No. 1), compensable injury. The appellant (carrier) appealed, arguing that the determinations of the hearing officer were supported by insufficient evidence or alternatively were contrary to the great weight and preponderance of the evidence. The claimant responded, urging affirmance.

In (Docket 2), the hearing officer determined that the claimant sustained a compensable injury on (date of injury for Docket No. 2), and as a result had disability beginning on June 30, 2002, and continuing through the date of the CCH. The carrier appealed on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed as reformed.

DOCKET 1

In Docket 1, the hearing officer did not err in determining that the compensable injury of (date of injury for Docket No. 1), includes an injury to the cervical area in the form of a C6-7 disc protrusion and that the claimant's current cervical condition and need for medical treatment is a direct and natural result of the (date of injury for Docket No. 1), compensable injury.

The parties stipulated that the claimant sustained a compensable injury on (date of injury for Docket No. 1). The carrier argues that expert evidence is required to establish the determination of cause of the claimant's condition and the relationship between the structural pathologies and the compensable injury. Further, the carrier argues that there is no competent medical evidence to support the conclusion that the claimant's injury includes the C5-6 and C6-7 levels, including C6-7 radiculopathy. The carrier alleges that neither MRI in evidence was read as showing a disc protrusion at C5-6. However, the MRI of the cervical spine dated June 8, 2000, showed "severe narrowing of the right neural foramina and narrowing of the central canal" at C5-6 and the MRI of the cervical spine dated February 20, 2002, in evidence notes a "diffuse disc bulge with small osteophytes" at C5-6. Generally, lay testimony is sufficient to establish causation where, based upon common knowledge, a fact finder could understand a

causal connection between the employment and the injury, but expert testimony may be required where such common knowledge does not exist. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.) Texas Workers' Compensation Commission Appeal No. 941464, decided January 9, 1995. In the present case, the hearing officer relied on the medical evidence submitted by the claimant in determining that his compensable injury includes an injury to the cervical area in the form of a C6-7 disc protrusion and that his disc protrusion at C6-7 and C5-6 and C6-7 radiculopathy are a direct and natural result of his (date of injury for Docket No. 1), compensable injury. Although the carrier presented evidence to the contrary, it was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the hearing officer's findings of fact in this regard are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer in Finding of Fact No. 3 found that the "claimant's current cervical condition, specifically his disc protrusion at C6-7 and C5-6 and C6-7 radiculopathy are a direct and natural result of his (date of injury for Docket No. 1), compensable injury."

The claimant had the burden to prove that his current cervical condition and need for medical treatment is a direct and natural result of the (date of injury for Docket No. 1), compensable injury. Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. There was conflicting evidence on the issue before the hearing officer and he was acting within his province as the fact finder in resolving that conflict in favor of the claimant. In view of the evidence presented, the hearing officer could find that the claimant's current cervical condition, specifically his disc protrusion at C6-7 and C5-6 and C6-7 radiculopathy are a direct result of his (date of injury for Docket No. 1), compensable injury. That determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, we will not disturb it on appeal. Cain, *supra*.

We note that Conclusion of Law No. 3 did not include the conditions the hearing officer specifically found as part of the claimant's current cervical condition in Finding of Fact No. 3. We reform Conclusion of Law No. 3 to read as follows: the compensable injury of (date of injury for Docket No. 1), includes an injury to the cervical area in the form of a disc protrusion at C6-7 and C5-6 and C6-7 radiculopathy.

DOCKET 2

The claimant testified that on (date of injury for Docket No. 2), he injured his low back while lifting a reel of cable material. He testified that he immediately felt a sharp stabbing pain in his low back. The carrier argues that the only evidence of causation is

the claimant's testimony and it was simply without credibility. The hearing officer noted that the claimant's testimony was credible and that while the claimant had a low back injury in 1983, the hearing officer was persuaded that the evidence demonstrated he suffered no effects of that injury for several years.

The claimant had the burden to prove that he sustained a compensable injury and that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer could consider the claimant's testimony and the medical reports. We conclude that the determinations are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Terri Kay Oliver
Appeals Judge

_____
Edward Vilano
Appeals Judge