

APPEAL NO. 031843  
FILED AUGUST 27, 2003

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 June 10, 2003. With regard to (Docket 1) the hearing officer determined that the appellant 1's (claimant) compensable (low back) injury of (date of injury for Docket No. 1), includes bulging disks at L2-3 and L4-5 levels, degenerative disk disease at L2-3 and L4-5 levels, and annular tear at L2-3 after (date of injury for Docket No. 2). With regard to (Docket 2) the hearing officer determined that the claimant did not sustain a new compensable injury on (date of injury for Docket No. 2), and that the claimant did not have disability because he did not sustain a (new) compensable injury.

The claimant and appellant 2 (carrier 1) appeal contending that the claimant sustained a new and different compensable injury on (date of injury for Docket No. 2). Respondent (carrier 2) responds urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant, a concrete worker, sustained a compensable (low back) injury on (date of injury for Docket No. 1). It is relatively undisputed that the claimant was treated by Dr. A, missed work for a week or 10 days, and then returned to his preinjury job. Whether the claimant's injury had resolved, as the claimant and carrier 1 maintained, is disputed. The claimant testified that on (date of injury for Docket No. 2), while using a sledge hammer in the course and scope of his employment he felt a sharp twisting pain in his low back. In evidence were MRI's performed on May 22, 2000 (due to the (date of injury for Docket No. 1), compensable injury), and February 4, 2003 (after the claimed (date of injury for Docket No. 2), injury), Claimant's Exhibit Nos. 15 and 16. There is a large amount of conflicting medical evidence, including the fact that Dr. A, when he examined the claimant on June 3, 2002, did not note a new injury or reinjury and said that the (date of injury for Docket No. 2), incident was an "exacerbation of previous injury." The claimant and carrier 1 cite the difference in symptoms, treatment, return to work, and prescribed medication (or lack thereof) after the (date of injury for Docket No. 1), compensable injury, and the (date of injury for Docket No. 2), incident as showing a new injury had occurred. All the parties cite the reports of Dr. H, a Texas Workers' Compensation Commission appointed required medical examination doctor. Dr. H's reports are not conclusive and can be interpreted in different ways.

The medical evidence was in conflict in regard to the disputed issues and we conclude that the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. This is equally true of medical evidence. Texas

Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. Although another fact finder might have reached a different conclusion on the same evidence, that alone is not a sound basis on which to reverse the hearing officer's decision. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do not find it so in this case.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Paula Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Robert W. Potts  
Appeals Judge