

APPEAL NO. 032451
FILED OCTOBER 30, 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 August 13, 2003. The hearing officer determined that the appellant's (claimant) compensable (low back) injury of _____, does not extend to or include the recurrent herniation of the claimant's L4-5 spinal disc.

The claimant appeals, contending that the hearing officer erred in determining that the claimant's original back injury was successfully treated through surgical intervention and that even if her recurrent L4-5 disc herniation was due to a nonwork-related fall in the bathtub at home, the "reason for the fall" was the weakness caused by the original compensable injury. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable low back injury on _____. An MRI performed January 29, 2002 (dated January 30, 2002), showed a 5-6 mm disc herniation at L4-5. The claimant had spinal surgery on January 31, 2002. Although disputed, the claimant's back condition improved; she testified that she continued to have left leg numbness. A second MRI performed on September 18, 2002, showed only a 2 mm disc bulge at L4-5. The claimant had a second lumbar spinal surgery on November 15, 2002. In a follow-up report dated February 10, 2003, the claimant's treating doctor noted "dramatic relief of her left lower extremity symptoms." The doctor recommended physical therapy and to return in two months. The doctor's next report, dated February 24, 2003, noted a history of "fell in the bathtub 2 days ago" and increased left lower radicular pain. A third MRI performed on May 23, 2003, showed an "8-10 mm" disc herniation at the L4-5 level. The hearing officer, in her discussion, commented on the different MRI findings and concluded "that Claimant's recurrent herniated disc of the L4-5 spinal level was caused by a fall at Claimant's home and not caused by the natural progression of her [compensable] injury." The claimant argues on appeal as "the devil's advocate" that if the fall at home caused the recurrent herniated disc then the original injury was the cause of the fall "due to radicular pain and weakness."

Whether the claimant's compensable injury included the alleged conditions was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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). The hearing officer could believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). As the

trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 **HARTFORD UNDERWRITERS INSURANCE** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge