

APPEAL NO. 040121
FILED FEBRUARY 27, 2004

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 November 19, 2003. The record closed on December 18, 2003. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes the herniations at levels L4-5 and L5-S1. The appellant (carrier) appealed the hearing officer's extent-of-injury determination based on sufficiency of the evidence grounds, and argues that the claimant's true condition had been diagnosed five months post injury. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable lumbar and cervical strain/sprain injury. The claimant testified that on _____, she was pushing a cart and that she backed up against another cart losing her balance and falling backwards on top of the cart injuring her low back, neck and right arm. An MRI of the lumbar spine dated December 20, 2001, reflects a disc herniation at L4-5 and disc protrusion at L5-S1; and an MRI of the lumbar spine dated January 1, 2003, reflects a disc herniation at L4-5 and facet asymmetry at L5-S1. A medical report dated October 21, 2003, by Dr. M, reflects that he reviewed both MRIs and he opined that the claimant's current symptoms were a direct result of the injury the claimant sustained on _____. The claimant contends that her compensable injury extends to include herniations at L4-5 and L5-S1. The carrier contends that the medical records reflect that the claimant has degenerative disc disease at L4-5 and L5-S1.

There was conflicting medical evidence presented on the disputed issue. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should 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). Applying this standard, we find no reversible error.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge