APPEAL NO. 042124
FILED SEPTEMBER 28, 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 August 3, 2004. The hearing officer determined that the respondent's (claimant) compensable injury of _____, includes right-sided S1 radiculopathy as a result of the herniations at L5-S1 subsequent to February 2, 2002, sustained as a result of the injury of _____. The appellant (self-insured) appealed, arguing that the hearing officer's determination is against the great weight and preponderance of the evidence so as to be clearly erroneous and manifestly unjust. The claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that she was employed as a school custodial worker on _____, when a cafeteria table fell on her. The claimant received treatment and was found to have reached maximum medical improvement on April 18, 2001, with an impairment rating of 10%. The claimant testified that she has continued to experience pain in her lower back. On April 2, 2002, the claimant sought medical attention for pain in her back and reported that her back pain had become worse after a repair of some pipes following a freeze. Her treating doctor indicated that he was unsure whether she sustained a new strain injury in the course of working on the pipes or whether the pain is due to the old, compensable injury. On July 11, 2002, the treating doctor clarifies his report at the request of the claimant to indicate that she did not actually repair the pipes herself and that she had exacerbated the prior injury. On September 13, 2003, the claimant returned to her treating doctor reporting back pain with spasms. The medical reports indicate that she told the doctor that she had been involved in a motor vehicle accident (MVA). On November 13, 2003, the treating doctor opines again that the claimant does not have a new injury, but rather, an exacerbation of the original injury. The claimant was seen for a Texas Workers' Compensation Commission-appointed required medical examination (RME) on June 17, 2004. The RME doctor agreed with the treating doctor that the claimant's compensable injury had been exacerbated by the incident of fixing the pipes. He also found little difference in the disc herniation at the L5-S1 levels between MRIs conducted on November 15, 2000, and June 11, 2003.

The issue of extent of injury presented a question of fact for the fact finder. 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 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. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer noted in his Background Information section of the decision and order that the medical records established that the claimant's current low back condition is a direct result of the initial injury of _____. He also found that the claimant was involved in a MVA on May 6, 2003, which caused an exacerbation of her initial back injury, which occurred on _____. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **a political subdivision self-insured through the WEST TEXAS EDUCATIONAL INSURANCE ASSOCIATION** and the name and address of its registered agent for service of process is

KC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge