APPEAL NO. 950152

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 15, 1994, a contested case hearing (CCH) was held in (city), Texas, (hearing officer) presiding. The sole issue was: "1. Is CLAIMANT's current condition, which includes demyelination, incontinence and back pain, related to her (date of injury) compensable injury?" The hearing officer determined that the claimant's current health problems, which include demyelination, incontinence and back pain, are a result of the progression of a natural disease of life and are not the result of claimant's (date of injury), compensable injury. Appellant, claimant, disputes 14 of the hearing officer's 16 findings of fact and the substantive conclusion of law on principally factual or interpretive grounds. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, carrier, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

The hearing officer in this case was very patient and appropriately gave the pro se claimant a great deal of latitude, nonetheless, the record of the CCH involved over five and a half hours of testimony and argument, much of it cumulative and repetitive.

Although this claim involves the nature and extent of a compensable (date of injury), fall, the pertinent history goes back to January 1986, when claimant alleges she sustained another work-related injury.[1] Claimant sought treatment for a back injury from a chiropractor who returned her to work in February 1986, although continuing to treat claimant.[2] Claimant recites, in her journal and narrative, that in November 1989 she awoke with "severe numbness in left leg and foot" which very quickly spread to both legs and then her entire body from the waist down. Claimant continued to see her chiropractor and subsequently several other doctors. In 1989 and 1990 claimant recorded that she continued to be in pain, was unable to carry very much and that "[t]he numbness and pain have never completely gone away." Claimant experienced a "bad fall" in her apartment in February 1991, and sought treatment from (Dr. S), another chiropractor. In February 1991 claimant consulted a urologist about bladder problems and was prescribed medication for urinary incontinence. On (date of injury), claimant slipped, fell and injured her back and head turning out a light switch in the employer's warehouse. The compensability of that

[1]That injury resulted in an "old law" claim which eventually was resolved in a jury trial which apparently ended in December 1994.

[2]Much of claimant's history of her activities prior to (month year) came from a 15-page document entitled "Tabular Documentation" referred to here as a journal, and a written 10-page narrative summary dated October 19, 1992, both prepared by the claimant, and admitted into evidence as Carrier's Exhibit Nos. 1 and 2.

injury was not contested. Claimant was taken to the hospital x-rayed, told everything was okay, released and sent home the same day as the fall. Claimant testified that the next day she went to Dr. S with complaints that she hurt all over, but principally her back. Claimant's journal indicates that numbness returned on April 9, 1991, and "nothing works to control it." Claimant testified that Dr. S began adjustments but that two to two and a half weeks after the fall she began having bowel and bladder incontinence and that Dr. S referred her to a neurologist, (Dr. F). Claimant testified extensively regarding what the doctors told her. Dr. S, in a report dated July 31, 1991, notes claimant is being treated by Dr. F and that claimant said she was receiving "P.T." Dr. S released claimant to Dr. F's care.

Dr. F, in a report dated June 15, 1991, recited claimant's medical history going back to the January 1986 injury and included waking up "with numbness from the waist down" approximately two years ago (apparently referring to the November 1989 incident). Dr. F recites that claimant began exercising and "her symptoms began to diminish and the numbness descended down to the ankle." Dr. F continued:

> She had done well until (month), (year), when she fell at work landing on her buttocks. She noted back pain initially and stiffness, and approximately two weeks later, noted an ascending numbness to the knees. She now notes difficulty walking and pain and dysesthesia from the knees down with maximal dysesthesias from the ankles down. She has low back pain and complains of urinary frequency and occasional fecal incontinence. She also complains that with prolonged sitting the numbness ascends to her waist. She is taking Ditropan in an attempt to control her urinary difficulty.

Dr. F recommended MRIs of the thoracic and lumbar spine. Claimant said the MRI was inconclusive and that Dr. F suggested she might have multiple sclerosis (MS). Dr. F's next report is dated December 8, 1992, recites an office visit of December 4, 1992, and that claimant "had undergone treatment at the Upledger Clinic [clinic] in (state), and over the next 30 days she felt much better." Dr. F notes that claimant complains that her earlier symptoms had returned. Dr. F's examination was "unremarkable." Dr. F concluded:

> I am not exactly sure what is wrong with [claimant]. She reportedly recovered almost completely with physical therapy, however, her examination today appears to demonstrate difficulty at the T-5 spinal cord. Previous investigation of the T-5 spinal cord, however, has not demonstrated any clearcut pathology.
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> I think [claimant] would best be served by repeat treatment through the [clinic].

Claimant, in an Employee's Request to Change Treating Doctors (TWCC-53) dated February 26, 1993, requests a change of treating doctors from Dr. F to (Dr. T), an

orthopedic surgeon, for the stated reason that her ". . . medical treatment seems to be at a standstill." Dr. T, in a report dated March 8, 1993, recites a history of the (date of injury), fall but makes no reference to earlier medical problems. Dr. T does reference Dr. F by saying that "she was seen by [Dr. F], a neurologist, who thought she might have MS [this is the first documentation of MS] or a spinal cord tumor, but MRI studies did not confirm this." Dr. T hospitalized claimant on April 17, 1993, for extensive testing including a neurological consult by (Dr. H). Dr. H, in a handwritten progress note dated "4/9," states ". . . tests are suggestive of M.S., while hx [history] is unusual . . . pt very keen to relate this to WC and fall. Have spent over 30 min. discussing [with] pt. e.g. findings not directly related to trauma, problematic to argue M.S. from ppted [?] by trauma." Dr. H, in reports dated April 7 and 8, 1993, indicated his studies showed abnormalities consistent with M.S. a demyelinating disease. Dr. T, after receiving several consults, in a report dated April 17, 1993, gave a final diagnosis of "[p]robable multiple sclerosis with neurogenic bladder." Carrier, by letter dated July 7, 1993, to Dr. T, stated that they would no longer pay for treatment unless specifically related to the injury of (date of injury), and that they would not pay for any treatment related to MS.

Apparently, carrier, at some point, requested an independent medical examination of claimant by (Dr. RS). Dr. RS, in a report dated February 14, 1994, reviewed claimant's medical records, stated that claimant ". . . has a multiplicity of complaints and symptoms. She can go back to 1986 and relate [sic] you just as much of a history as of after 1991." Dr. RS concludes:

> The patient has been diagnosed as having [MS] which is by [Dr. H], neurologist in (city). The MRI's are certainly compatible with the demyelinating aiding lesions and with [MS]. The symptoms of [MS] is [sic] as well known as usually seen with bouts of remission and exacerbation and she certainly follows this type of clinical syndrome.
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> I think we are dealing with a lady that sustained an injury which probably exacerbated the low-back degenerative changes. I do not really think anybody can answer with any degree of accuracy, although the literature is not specific and I do not know anywhere in the literature where trauma has exacerbated a demyelinating process unless it directly affects an isolated nerve root where is [sic] was cut.

Dr. T, in a report dated December 13, 1993, stated claimant has a "degenerative disk disease" at L4-5 and L5-S1 and that "[i]t is possible that the injury aggravated her symptoms, causing the onset of neurogenic bladder and bowel" and "there is no question that her injury appears to have aggravated her symptoms. . . ." In a progress note dated April 11, 1994, Dr. T references "a prior history of an oil field injury in January of 1986" and

recites claimant "is doing well." In an October 12, 1994, report, Dr. T reports claimant's "clinic symptoms appear, if anything, to be improving" and that "most of her symptoms relate to the injury of (date of injury). . . ." In another report also dated "10/12/94," Dr. T states:

In my opinion, her symptoms relate to the injury which occurred on (date of injury). She has post-traumatic degenerative change at T7-8, L4-5 and L5-S1 compatible with this injury.

It is recognized that she suffers from a demyelinating condition involving the spinal cord. This is probably [MS] but is probably not the cause of most of her symptoms.

The parties appear to agree that demyelination is the destruction, eroding, or loss of the myelin sheath of a nerve or nerves. Claimant (and carrier for that matter) agrees that trauma does not cause MS. Claimant generally denies that her condition (bladder and bowel incontinence, demyelination and back pain) is due to MS, arguing that exercise and physical therapy relieves her symptoms which is contrary to what she believes would occur if she had MS. Simply stated, it is claimant's position that her (date of injury), fall "aggravated accelerated and exacerbated" her condition, whether or not it included MS. Claimant argues that there is no conclusive proof that she does or does not have MS, but regardless, her symptoms and condition were aggravated, accelerated and exacerbated by the (month year) fall. Claimant argues her position is supported by Dr. T's October 1994 reports.

Carrier argues that claimant has had the same symptoms since 1989 and that those symptoms have gotten worse (that MS is "a progressive disease") over time due to the "insidious progressive disease," citing Dr. F's and Dr. H's (as well as other) reports. Carrier's position is that originally Dr. T agreed with the other doctors that claimant had MS with a neurogenic bladder, but that more recently Dr. T is giving claimant the "benefit of a doubt" by trying to establish causation between the (month year) fall and claimant's current condition.

The hearing officer made some 16 findings of fact (two of which contain obvious typographical errors, one of which claimant challenges) and concludes that claimant has failed to prove that her "current condition, which includes demyelination, incontinence and back pain" is related to the (date of injury), fall and compensable injury.

Claimant contests 14 of the 16 factual determinations and conclusion, pointing out the aforementioned typographical error, challenging the scientific accuracy of the stated issue, reiterating much of her testimony at the CCH and adding commentary about alleged facts not testified to or admitted at the CCH. Although we decline to address each point on a point-by-point basis, we have considered all of claimant's contentions of error and accept

them as challenging the sufficiency of the evidence to support the hearing officer's decision.

First, we note, as did the hearing officer, that the claimant had the burden of proving that her current condition was related to caused by the (month year) compensable injury. Martinez v. Travelers Insurance Co., 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ). Claimant sought to meet this burden by her own testimony and by the more recent medical reports of Dr. T. It is the hearing officer who is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Regarding claimant's testimony, the hearing officer could consider claimant's journal and October 19, 1992, narrative and consider any discrepancies as well as the claimant's explanation of those discrepancies and inconsistencies. It was for the hearing officer, as the trier of fact, to resolve any inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. 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).

In this case, there was somewhat conflicting medical evidence, both between the various doctors as well as what appear to be conflicting opinions by the same doctor, Dr. T. The hearing officer noted that claimant had consulted a urologist about bladder problems and was taking medication for urinary incontinence two months before her compensable fall. Claimant's explanation is that she did not experience a "total loss of bladder control until after the (date of injury) [injury]." The hearing officer was free to judge that explanation and other inconsistencies in the evidence and medical reports. Dr. H, in his hospital notes, clearly indicates that he believes claimant's condition was suggestive of MS and that claimant's condition was not directly related to trauma. It is in an April 7th note that Dr. H remarks that claimant's "complaints and story seems [sic] to get stranger and stranger." Basically, Dr. F's, Dr. T's early reports, Dr. H's and Dr. RS's reports appear to be in general agreement--or at least not dramatically inconsistent with each other--most of which find some degenerative disc disease, and a demyelination process possibly associated with MS. Only Dr. T, in his December 1993 and October 1994 reports, relates claimant's symptoms with her compensable fall of (month year).

The court in Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.) recited the general rules relating to expert medical testimony which include that the opinions of medical experts are not conclusive and that the trier of fact may accept or reject such testimony in whole or in part. *Id* at 494. As an exception to the general rules, expert testimony is required when the matter is such that the fact finder is unable to form an opinion based on the evidence as a whole aided by one's own experience and knowledge. The court gave as examples "the cause, progression and aggravation of disease, and particularly of cancer. . . ." *Id* at 495. We believe this case to be of such a type that "only the testimony [or evidence] of experts

skilled in that subject has any probative value. [Citations omitted.]" As noted above, Dr. T, in his December 1993 and October 1994 reports, expressed opinions that claimant's injury "aggravated her symptoms," that claimant's condition "might be related to her injury" and that claimant's condition "might be related to her injury" and that claimant's "symptoms relate to the injury . . ." but never indicated the mechanics or process by which the (month year) fall might "aggravate" or "be related" to claimant's complaints of incontinence and the demyelination process. Dr. T merely makes conclusory statements that the injury was aggravated by, or was related to, the fall without providing any description of how that might be so. Dr. T's conclusory statements appeared to be at odds, or at least inconsistent, with his earlier "final diagnosis" of probably MS with neurogenic bladder, and the findings of other doctors including Dr. H, whose consultation was requested by Dr. T. In any event, it is the hearing officer who must resolve any inconsistencies and conflicts in the medical evidence (Campos, *supra*) and he is free to reject expert medical evidence. Pegues, *supra*. The hearing officer chose to believe that claimant's current condition (demyelination, incontinence and back pain) was the result of the progression of a natural disease of life (either MS or some other causative factor) or of the normal aging process rather than the result of claimant's compensable injury. We find that determination to be supported by the medical reports and other sufficient evidence.

An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not so find and, accordingly, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge