APPEAL NO. 960021

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 1, 1995, in [city], Texas, with [hearing officer] presiding as hearing officer. Because the tape recording of this CCH was inaudible, the Appeals Panel remanded the case for reconstruction of the record in Texas Workers' Compensation Commission Appeal No. 951479, decided October 11, 1995. On October 31, 1995, the hearing officer held another CCH to reconstruct the record. The issues at the CCH were whether respondent (claimant) sustained a compensable injury and whether claimant had disability. In his decision and order of November 30, 1995, the hearing officer determined that claimant sustained a compensable injury and that he had disability from March 23, 1995, continuing to the date of the first CCH. On appeal, appellant (carrier) asserts that the hearing officer erred in determining that: (1) claimant sustained a compensable injury when [Mr. E] kicked claimant at work; (2) claimant sustained a compensable injury when he fell and injured his head and eye as a result of the alleged attack; (3) claimant suffered injuries to his groin, head, and left eye as a result of the alleged attack; and (4) claimant had disability. Carrier also complains that the hearing officer abused his discretion in admitting Claimant's Exhibit No. 2 into evidence. Claimant responds that sufficient evidence supports the hearing officer's determinations and that the hearing officer did not abuse his discretion in admitting Claimant's Exhibit No. 2 into evidence.

DECISION

We affirm in part and reverse and render in part.

Claimant testified that he was the lead man trainee for [employer] (employer). He said he told another employee, Mr. E, that his safety hat was on backwards, and that Mr. E ended up kicking him and injuring his groin. He testified that, at that time, "just" his groin was injured.[1] He said he continued to work that day. He testified that the next day, when he pulled up his jeans, he "hit" his groin where it was swollen and he fainted. He said that when he fell, he hurt his eye and his head. He went to the doctor and was treated for these injuries. He said he went to the doctor because his groin, head, neck, and eye were injured. He said he started having eye, head, and memory-loss problems after he fell and hit his eye.

In a July 26, 1995, letter, signed by [Dr. J], Dr. J agreed that, "the pressure on [claimant's] groin [when he put on his jeans could have] caused [claimant] to faint and injure himself when he hit the night stand." In a July 26, 1995, supplemental claim statement signed by Dr. J, it states that the primary causes of claimant's inability to work were "neck pain" and "headache" and that claimant's diagnosis is "post-concussion syndrome." A

[1] We note that some medical reports state that claimant was struck in the face, also.

March 31, 1995, letter from [Dr. S] states that there was "no evidence" that claimant was kicked and that "he turned out . . . to have . . . nonwork related [sic] problem."

Carrier contends the hearing officer erred in determining that: (1) Mr. E "attacked" claimant; (2) claimant fell and injured his head and eye as a result of the attack; and (3) claimant suffered injuries to his groin, head, and left eye as a result of the attack. Carrier contends the evidence shows only that Mr. E pushed claimant and that there was no attack. Carrier notes the lack of medical evidence showing that claimant's problem with his testicles was related to any kicking by Mr. E. Carrier asserts that claimant did not injure his head and eye as a result of the attack, that claimant merely fell at home while dressing, and that this fall, rather than an altercation, caused his injuries. It contends that claimant's fall at home was unrelated to the incident at work. It notes that Dr. S said claimant's groin problem was not a work-related problem and that laboratory tests showed he had a strep virus.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there is a conflict in the evidence, the hearing officer resolves the conflicts and determines what facts have been established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury and the extent of his injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." This latter concept has been described as the "naturally flowing consequences" of an original injury. *See* Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994. It has also been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994.

Regarding the groin injury, there is a sufficient evidentiary basis to find that claimant sustained a compensable groin injury in the course and scope of his employment on [date of injury]. There was conflicting evidence regarding whether Mr. E kicked claimant. The claimant's and Mr. E's testimony raised a fact issue and the hearing officer was entitled to and did believe claimant's testimony over the other evidence. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Regarding causal link, the trier of fact may find a causal link between the injury and employment from the

claimant's testimony alone. Texas Workers' Compensation Commission Appeal No. 951246, decided September 11, 1995. There was medical evidence that claimant had a groin contusion and Dr. J agreed in a letter dated July 26, 1995, that the contusion diagnosis was directly related to the kick at work. There is sufficient evidence to support the hearing officer's determination that claimant sustained a compensable groin injury in the course and scope of his employment.

Regarding the head and eye injury, however, the hearing officer's determinations are against the great weight and preponderance of the evidence. The hearing officer determined that claimant sustained an injury to his eye and head on the same day that he injured his groin: [date of injury]. However, the evidence showed that the eye and head injury occurred on [the day after the date of injury]. Further, claimant testified that he fainted at home and injured his eye and head after he pulled up his jeans while getting dressed. He said the pressure on his injured scrotum caused him to faint. Although compensability of the eye and head injury is generally a question of fact, the fact that claimant was in a weakened or injured state and so fainted after putting pressure on an injured body part does not mean that his subsequent injury to his eye and head was "naturally flowing" from the original groin injury. Here, there was a distinct, nonwork-related injury to a different body part. Even considering all of the evidence in the record, including the medical evidence, we determine that the hearing officer's Findings of Fact Nos. 5 and 6 and Conclusion of Law No. 2, insofar as they concern the eye and head injuries, are against the great weight and preponderance of the evidence and we reverse them. *See* Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995; Cain, *supra.*

Carrier contends the hearing officer erred in determining that claimant had disability, asserting that, because claimant did not sustain a compensable injury, he could not have disability. Carrier asserts that because claimant's eye and head injuries were not work related and because he had no groin injury, claimant did not have a compensable injury and, thus, had no disability.

Claimant testified that he has not returned to work because Dr. J has him on "disability." Claimant said he cannot drive, that he is unable to lift anything, that he has memory loss, and that he "passes out." It is not clear from the evidence whether claimant contends his disability results from his groin injury or his other injuries. In an undated document signed by Dr. J, Dr. J stated that one of the primary reasons claimant is unable to work includes, "post traumatic scrotal trauma."

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). We have already held that the hearing officer did not err in determining that claimant suffered a compensable groin injury. Although claimant did not clearly state the reasons why he was unable to work, there is minimally sufficient evidence to support a disability determination

with regard to the groin injury. The hearing officer's disability determination is not against the great weight and preponderance of the evidence.

Carrier contends the hearing officer erred in admitting Claimant's Exhibit No. 2 into evidence. Claimant's Exhibit No. 2 is a letter from claimant's attorney to Dr. J, on which Dr. J apparently answered some questions and then signed his name. Carrier complains that this letter assumes facts that are not in evidence in that the questions asked of Dr. J assume that claimant was kicked in the groin when, carrier contends, the evidence showed he was not kicked in the groin. Carrier asserts that "anybody could have written the answers on the letter," and complains that Dr. J's deposition could have been taken if the information in question was needed. Carrier contends the questions in the letter called for opinions that Dr. J was not qualified to give because Dr. J had not heard the evidence and did not know how the injury occurred.

To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Dr. J was claimant's treating doctor and knew the history that claimant gave him regarding his injuries. The hearing officer judged the credibility and authenticity of Dr. J's responses that were indicated on the letter and assigned the appropriate weight to this document. We perceive no abuse of discretion. Considering the record as a whole, there is no indication that the error, if any, in admitting the document, if any, was reasonably calculated to cause or probably did cause the rendition of an improper judgment. Appeal No. 92241, *supra*.

The hearing officer's decision and order is affirmed in part and reversed and rendered in part.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

With all respect to my colleagues in the majority, I must dissent in the strongest terms. It is well established in the Texas workers' compensation law that an injury caused by a compensable injury is itself compensable. The San Antonio Court of Appeals stated this doctrine as follows in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, *aff'd per curiam*, 432 S.W.2d 515 (Tex. 1968)):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work.

Nor is this doctrine limited to Texas. Professor Larson in his treatise on workers' compensation law discusses cases from a number of jurisdictions in which injuries resulting from subsequent falls due to the weakened condition of the body from a compensable injury have been held compensable. *See* Larson, Workmen's Compensation Law, Vol. 1 § 13.12(a), pp. 3-546-553 (Matthew Bender 1992). Professor Larson cites a New York case in which the claimant's injuries from a fall due to dizziness resulting from the compensable injury was compensable. *See* Scherf v. White Plains Iron Works, 13 A.D.2d 570, 211 N.Y.S.2d 736 (1961).

In Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993, the Appeals Panel held that the issue of whether the subsequent injury (sometimes referred to as "follow-on injury") was caused by the compensable injury is one

of fact. We have repeatedly cited this case with favor for that proposition. On numerous occasions we have also quoted from that case the following standard of review regarding factual matters which we enunciated in Texas Workers' Compensation Commission Appeal No. 93455, decided July 22, 1993:

> Section 410.165(a) provides that the [CCH] 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 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, 702 (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, 290 (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, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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, even if the evidence would support a different result. 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 great weight and preponderance 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).

In the present case the majority asserts that the finding of the hearing officer that the claimant's follow-on injury was caused (or naturally flowed) from the compensable injury was against the great weight of the evidence.[2] Yet the majority fails to recite the evidence that constitutes this great weight and preponderance of the evidence. The only medical evidence to which it alludes is a report from Dr. S in which he states that the claimant's groin problem was not work related. Dr. S is apparently talking about some sort of strep virus not related to the claimant's groin injury. This has nothing to do with the follow-on injury, but goes to the carrier's theory that the claimant was never struck in the groin at work at all, a

[2]The majority mentions technical flaws in the hearing officer's factual findings but does not find these dispositive. This is not surprising since the technical flaws mentioned, such as the hearing officer's finding that the follow-on injury took place on the same day as the compensable injury, are types which we have been willing in the past to reform or to resolve by recognizing that the hearing officer made implied findings in support of his decision. We have particularly done this in situations, such as the present one, when we can no longer remand the case because we have already remanded once.

theory not only rejected by the hearing officer but which the majority affirms the hearing officer in rejecting. There is in fact medical evidence from Dr. J supporting that the claimant's groin injury caused him to later faint and fall causing the head and eye injuries. Nor does it seem to me that expert testimony is required to support the proposition that pain in the groin can cause a male to fall down. Further the hearing officer's finding that the follow-on injury was caused by the compensable groin injury is supported by the claimant's testimony.

The majority states that the subsequent fall was a different injury to a different part of the body and therefore does not naturally flow from the original compensable injury to the groin. This makes absolutely no sense to me. A follow-on injury due to a fall is always going to involve additional injuries and usually to different body parts. Certainly, there are situations in which a subsequent fall might be so remote from the original compensable injury as to constitute the great weight and preponderance of the evidence that the follow-on injury did not naturally flow from the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. But here where the follow-on injury took place the next morning, and when the claimant was still suffering the direct effects of the original injury as evidenced by his emergency room report of the same day showing he had a groin "contusion," I do not see how this injury could possibly be too remote.

Because I am unable to fathom the majority's logic, because I believe that the majority is wrongfully invading the fact-finding function of the hearing officer and because I believe that follow-on injuries are compensable under the well-settled Texas law, I dissent. I would affirm the decision of the hearing officer, which is more than sufficiently supported by the evidence, and merely reform his findings as to date of the claimant's fall.

Gary L. Kilgore
Appeals Judge