APPEAL NOS. 000915
AND 001259

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 March 31, 2000. The issues were:

As to Docket No.: _____

1. Did the Claimant [respondent] sustain a compensable injury on _____?

2. Did the Claimant have disability resulting from the injury sustained in [sic] _____?

As to Docket No.: _____

3. Was the _____ compensable injury a producing cause of the Claimant's lumbar spine problems on or after _____?

4. Did the Claimant have disability resulting from the injury sustained on _____ from September 18, 1999 through the present?

In response to those issues, the hearing officer determined that claimant had not sustained a new injury on _____, but that the compensable injury of _____, was a producing cause of claimant's lumbar spine problems on or after _____, and that claimant had disability "beginning on September 18, 1998 [sic, although not appealed, this should clearly be 1999]" and continuing through the date of the CCH. The hearing officer's findings on disability have not been appealed and, therefore, have become final pursuant to Section 410.169. We do note the clerical or typographical error pertaining to the year of the beginning date of disability.

Appellant, (Carrier F), appeals, citing evidence which would suggest that claimant sustained a new injury on _____, and that respondent, (Carrier T), the carrier that had workers' compensation coverage on _____, should be responsible for claimant's income and medical benefits. Carrier T responds, urging affirmance. The appeals file does not contain a response from the claimant. It is undisputed that the employer independent school district changed workers' compensation carriers after January 6, 1999, but before _____.

DECISION

Affirmed.

This case is basically a dispute between Carrier F and Carrier T as to which carrier had coverage for the claimant's injury (or injuries). Claimant had been employed by the employer independent school district for a number of years, first as a painter and subsequently as a "laborer," or actually a general purpose maintenance worker. Claimant described his duties and they involved painting, operating heavy equipment, moving school furniture and equipment, etc. It is relatively undisputed that claimant may have injured his back as early as _____; however, on _____, claimant sustained a compensable low back injury (along with other injuries that resolved) when he was riding on a trailer, which was moving some lockers, and the lockers tipped over, throwing claimant to the ground, where he sustained a low back injury, among other things. Claimant treated with Dr. L, his regular doctor, who released him back to work. The employer provided light duty for a few days before claimant resumed his regular duties. On January 6, 1999, claimant again experienced low back pain lifting or moving a computer. Claimant again treated with Dr. L on two occasions and was released back to regular duty. Claimant then began treating with Dr. S on March 30, 1999. Claimant testified that he was continuing to have back pain which was temporarily relieved by steroid injections. An MRI ordered by Dr. S and performed in April 1999 was read to show disc bulges at L2-3 and L3-4 "and a teeny subligamentous herniation at the L4-5 disc." At some point, Dr. S apparently took claimant off work, although it is undisputed claimant had not missed any work because, in a note dated August 11, 1999, Dr. S released claimant to return to his regular duties. Claimant testified that he continued to have pain which ranged in intensity. Claimant testified that on _____, he was "bent over" painting bleacher seats when he experienced intense pain in his back and legs and fell to his knees in pain. There is some dispute regarding this event in that (Mr. W), employer's director of transportation, maintenance and custodial services, testified that he saw claimant walking normally down the stadium steps after this incident occurred. In any event, the hearing officer questioned claimant in detail on the mechanics of what he was doing and the pain he felt at the time of the stadium-painting incident. There is also a dispute regarding what claimant said when he reported this incident. The hearing officer accurately summed it up as follows:

> Secretary [Ms. J] who filled out the report of injury for the _____, claim, testified Claimant told her he thought it was his old injury acting up. Because she did not know what to do and sought advice from a superior, she decided to file the incident as a new injury.

Also somewhat unclear are Dr. S's comments on whether this was a flare-up or "aggravation" of the old _____ injury or a new injury. In a written deposition Dr. S, in successive questions, answered:

> Yes, his condition was caused by painting school stadium seats in the [school] stadium. This activity caused an aggravation of a pre-existing back condition which occurred on _____ and has produced bulging L2-3, L3-4 and herniation of L4-L5 disc.

Dr. S was then given the statutory definition of injury (Section 401.011(26)) and asked if claimant sustained a new injury. Dr. S replied:

> In my opinion, the patient did not sustain a new injury in his low back -- his activities caused an exacerbation of a pre-existing condition.

The hearing officer sets out the two carriers' arguments in some detail in her Statement of the Evidence. Basically, Carrier F argues that claimant had pain of varying severity and was able to work before the _____, event, while claimant testified he had constant pain at the 8 (out of 10) level and could not work afterward. This, Carrier F contends, "clearly showed an enhancement, acceleration or worsening of the Claimant's pre-existing condition after the injury on _____." Carrier T argued that questions and answers posed to Dr. S and that claimant's being thrown from the trailer in _____ showed that the more likely cause of the claimant's injury was the _____ incident rather than the painting incident. Perhaps noteworthy is that neither carrier would authorize a repeat MRI after the _____, incident.

In any event, the evidence was conflicting and we have many times noted that 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 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 obviously gave greater weight to Dr. S's opinion than to inferences raised by evidence to the contrary.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge