

APPEAL NO. 92507

On August 24, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the appellant, (claimant), (claimant) had not sustained a compensable injury to her back on (date of injury), while employed as a stocker at the (military base) commissary by the (employer). The hearing officer noted the lack of objective indications of injury in the medical records, as well as the lack of a causal connection between the contended injury and the employment, as indicated in medical records.

The claimant argues that the decision of the hearing officer should be reversed because she feels the evidence proved that she was injured in a quick, twisting motion while grabbing a sliding bag of dog food during the early morning hours at the commissary. She argues that witnesses against her were not truthful in their recollection of events. The claimant recites all the evidence and facts as she understands them, in support of her appeal. The respondent's insurance carrier asks that the decision be upheld.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

The claimant stated that during the early morning hours of (date of injury), at approximately 1:30 a.m., she was stocking shelves at the (military base) commissary with dog food. She stated that she worked her way down to the last shelf, where the large bags of food weighing between 10-20 pounds were stacked, and noticed a 5 pound bag of another brand of dog food was open and placed back behind the larger bags. The claimant said that she was injured while she was on her knees, reaching into the lower shelf area in order to clean away the torn bag and loose dog food from behind the larger bags. She said that she was sweeping the loose dog food out with her right hand, while her left arm was lightly braced on a stack of the larger bags located to her left. The large bags were stacked on top of each other, and there were about three or four bags. Claimant stated that she had earlier "lined up" these large bags so that they were even with the edge of the shelf. She stated that she moved her left arm, and at some point after that her left elbow bumped the stack, causing the top bag of dog food to slide off on the floor. Claimant stated that she reached across under her body with her right hand, in a quick jerking and twisting motion to grab the bag to prevent it from falling. At that point, she felt an acute twinge in her back.

The claimant said that she was unable to hold onto the large bag and it slid off on the floor. She stated that there was loose dog food on the floor of the aisle also. The claimant said that shortly after this, as she was laying there regaining her composure, a coworker, (ED), came down the aisle. She said she told ED about the injury, who at first advised her to report the injury to the project manager, (FP), but then told her it was probably just a pulled muscle and would go away. The claimant indicated she did not want to tell FP about the injury for fear of being taken "off the clock" and losing pay. After ED left, her immediate supervisor, (RD), came by and the claimant also reported the injury to her. The claimant

said that she was upset and had been crying. She finished out her shift only because RD did her work for her. She stated that someone else signed her out at the end of her shift. Claimant said that she was driven to and from work in a van provided by the employer, which was driven by (CR). The claimant said she told CR about her injury on the way home.

The claimant said she had worked for the employer since sometime in October 1991. She did not return to work after (date of injury). She said that she reported the injury a few days later when she was able to catch up with FP at the employer's location. She said that she first sought medical attention on January 10, at the emergency room of Scott & White Hospital, and was put on 3 days bed rest. The claimant maintained that neither Scott & White Hospital nor (Clinic) (where she later sought treatment) had ever showed her proof of any findings. She stated that her chiropractor has told her that a gap and curving in her spinal column has been found. She said that (Dr. D) at (Clinic) has told her she had torn tissue and soft tissue. She described continuing pain in both legs, her back, and her arm.

At the time of her accident, the claimant said she was wearing a back brace furnished to the employees by the employer. She denied, however, that she had a back brace of her own, or that she had been injured at any time prior to the date of the incident involving the dog food. Claimant agreed that the large bags of dog food had been stacked and lined up properly.

Other witnesses disputed some of the claimant's testimony. RD worked for the commissary, rather than the employer. She stated that it was her job to make sure that everything ran smoothly and to make sure that stockers got merchandise on the shelves. Occasionally, that meant that she would join in the stocking operations herself. On (date of injury), RD said that she did not recall seeing either loose dog food or a large bag of dog food lying on the floor of the aisle where claimant was working. She said that she ordinarily would know if a clean-up was requested on an aisle. RD recalled that she inspected the aisle in question at about 2:00 a.m. and there was nothing out of the ordinary. RD said that claimant did not tell her she had been injured, and that, as far as she recalled, claimant continued to do her work. RD stated she was positive that she did not complete claimant's work, and that she would not have been able to cover for her in the manner suggested by claimant in her testimony. RD stated that claimant was a good worker, prone to mood swings. RD said, however, that claimant was not upset or crying (date of injury).

RD testified that back braces were issued to stockers, but that she had seen, on several occasions, that claimant wore a white back brace of her own, and told RD that she wore it because she had back spasms. RD could not recall if claimant wore her brace on the date of the incident in question. RD first heard on January 10th from FP that claimant asserted she had a back injury on the (date of injury); RD said she asked all of claimant's coworkers if they knew anything about it, and was told they did not. RD identified the dog food bags on the bottom shelves as ten pound bags. She described how to properly stack the bags, and indicated that improper stacking would result in bags sliding during the stacking process.

FP was the project manager for the employer who was stationed at the commissary. He indicated that several clients of MHMR worked at the commissary. He indicated that teams of stockers would transfer merchandise from opened boxes onto shelves an aisle at a time. He said that cleanup of spilled or broken products would have to be done prior to stocking items on shelves. He described the pat-down procedure used to stock the large bags of dog food in order to stabilize them. The bags would be lined up flush with the end of the shelf. FP opined that if bumped from the front or side, a dog food bag would slide backward into the shelf. FP affirmed that claimant signed herself out at the end of her shift. FP agreed that the injury was first reported to him on January 10th, and that claimant was crying at the employer's office because she had been refused medical treatment. FP stated that claimant, prior to (date of injury), told him she had been injured on another job, but he was uncertain of the nature of the injury.

A transcribed statement from the van driver, CR, given to the adjuster for the carrier, says that claimant complained before (date of injury) about muscle spasms in her back. CR recalled that she also complained about her back when picked up on (date of injury), although she did not say she had been injured.

A review of medical evidence in the record indicates the following:

- 1/10/92: examined by (Dr. G) at Scott & White emergency department. Assessment: lower back strain. Dr. G prescribes three to four days bed rest and recheck if no improvement in that time. The report recites a history that claimant said she strained her back while reaching out while cleaning up some spilled dog food.
- 1/15/92: examined by (Dr. S), Scott & White emergency department. In the history, Dr. S recorded, as history, that she began to experience back pain with any sort of movement a week previously, and that "she denies any injury". Severe and recurrent back pain is noted as the diagnosis.
- 1/23/92: (Dr. F), Scott & White, on referral for neurological assessment. Dr. F notes claimant's pain is not well localized, that she hyperventilated, and that she has superimposed anxiety symptoms. Notes complaints of radiating pain from lower back into extremities. Diagnosis is pain syndrome of uncertain etiology, and functional overlay. Dr. F notes that, under the functional overlay, she has significant problem with low back pain.
- 1/27/92 CT scan of spine. Impression: congenitally small canal and absence of intraspinal fat makes evaluation impossible. (For the claimant's information, "congenital" means a condition that she was born with).
- 1/29/92 MRI of lumbar spine. Negative. No evidence of herniation, significant bulging, stenosis of central canal, or abnormalities.

- 1/31/92: Dr. F opines that her pain is of muscular or musculoskeletal origin, with functional overlay. He notes that her pain should resolve on its own but hasn't to date.
- 3/10/92 discharge summary from (Hospital), (Dr. D). Diagnosis: mild fascial back pain. Secondary diagnosis: depression. History recited that claimant was stacking dog food bags and when some started to fall over, she grabbed them and experienced acute onset of back discomfort.
- Notes of Dr. D from April through June 1992, indicate that he feels her major problem is emotional and psychological (5/6/92 notes). Dr. D, however, also indicates that he believes claimant has a soft tissue injury.

Treatment notes from (D) Chiropractic Clinic recite similar history of the injury. Initial medical report filed by clinic on 6-15-92 indicates diagnosis of thoracic segmental dysfunction, lumbar IVD syndrome, myofascitis and myositis, and radiculitis.

It is clear from reading the hearing officer's findings of fact that he believed that her medical records indicate that her symptomology was a somatization disorder or functional overlay. Both of these terms mean that the pain is based primarily on mental or emotional factors, rather than physical. He further finds that the records do not indicate a causal connection between her employment and the injury she asserts. Virtually all findings of fact relate to the medical evidence.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. 1989 Act, Art. 8308-6.34(e). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The claimant has the burden of proving, through a preponderance of the evidence, that an injury occurred in the course and scope of employment. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ). Generally, medical evidence is not required to prove that an injury occurred, and testimony alone may be sufficient proof. Ge v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989). However, a trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ). The Appeals Panel has said that although medical evidence is not required to prove an injury, it may be considered as tending to corroborate testimony that an injury did or did not occur. Texas Workers' Compensation Commission Appeal No. 92301 [decided August 24, 1992].

In this case, the hearing officer need not have based his findings relating to injury

solely on medical evidence. It is true that there is evidence that the claimant had, at the times she was examined, some soft tissue injury. However, there is disputed evidence as to whether such injury was caused by activities at work. It must be fairly stated that several witnesses disputed the claimant's accounting of how her injury happened. Although the claimant said her pain was acute, and she mentioned it at the time to several coworkers, many of these same witnesses deny this. Although we realize that the claimant disputes that she had her own back brace, RD stated that she saw it. The employer issued back braces of its own which the hearing officer could have believed would likely prevent injury. The hearing officer could well have concluded that the extent of pain experienced by the claimant did not result from the actions she described.

The hearing officer's decision is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge