APPEAL NO. 931058

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §. 401.001 *et seq*. (formerly V.A.C.S. Article 8308-1.01 *et seq*.) (1989 Act). A contested case hearing was held on October 20, 1993, in (city), Texas, with the record closing on October 25th. With regard to the single contested issue, whether there was a causal relationship between the claimant's work-related injury of (date of injury), and the symptoms she began experiencing on (date), hearing officer (hearing officer). determined that the claimant established that her later symptoms were caused by the earlier injury, that she has had eight or more days of disability since that date, and that accordingly she is entitled to temporary income benefits from (date), until she reaches maximum medical improvement or ceases to have disability. The carrier appeals this decision, contending that the hearing officer's decision is based on no credible evidence. There was no response filed by the claimant.

DECISION

We affirm the hearing officer's decision and order.

The claimant had been employed for 23 years with (employer). She was working as an oven operator on (date of injury), when she crawled under a conveyor belt to retrieve a baking pan. Upon backing out from under the belt, she raised up and a piece of metal struck her in the lower back; she said the event caused pain and a cut on her back. The claimant reported the incident to her foreman that day, but did not seek medical attention or miss any time from work at her job, which she said required bending, stooping, and lifting. The claimant said her back continued to bother her off and on "for a period of time," that "some days it hurt, some it didn't," and that it hurt the most when an oven broke down and she had to do increased bending and stooping.

In December of (year) she experienced back pain which she believed was associated with menstrual problems. On December 10th she saw her gynecologist, (Dr. W), whose notes reflect a complaint of low back pain with spotting for about a month. She continued to work at her job until the morning of (date), when she awoke with pain and was unable to walk. (The day before she said there had been a lot of breakdowns at work, which required her to manually lift pans off the conveyor belt, but she nevertheless said it was "just a normal working day.") She was seen at an emergency room where she was told she had arthritis, prescribed medication, taken off work for three days, and told to return if the problem did not resolve (the ER notes said claimant "denied trauma").

Because claimant's pain did not abate, she was referred to (Dr. HO) on May 11th. Electromyography and a nerve conduction study performed on May 18th indicated left L5 radiculopathy, "acute and recent;" the report signed by Dr. W said that the claimant "knows of no injury that could have provoked her present complaints." A myelogram and lumbar CT scan confirmed a herniation at L4-5. A laminectomy and diskectomy was performed by (Dr. HU) on July 29th. The claimant subsequently underwent physical therapy and work hardening and was returned to light duty work by Dr. HO; however, she said she had to stop

working in November or December of 1992, after having worked about a month to six weeks, because the light duty work involved lifting, bending, and stooping and was too strenuous for her.

On April 16th, in response to a letter from a Commission ombudsman as to whether claimant's back symptoms resulted from her injury, Dr. HO replied, "I cannot determine that her low back symptoms are related to a (date of injury) O-T-J injury. Her first visit to me was 5-11-92 with a 6 day history of left leg pain. She said the pain was of sudden onset and denied a past history of back or leg problems . . . . " The claimant denied that Dr. HO had asked her about the cause of her back pain. Because she became dissatisfied with Dr. HO she changed treating doctors, to (Dr. B), in April of 1993. She reported the (month year) incident to Dr. B, who she said had been treating her for depression. On July 3rd, Dr. B wrote that "It is my opinion that [claimant's] low back pain is associated with the injury sustained at work in (month)/(year)."

The claimant also had been seen once, on June 12, 1992, by (Dr. BR), the doctor used by her employer. On that date, claimant completed a form indicating that her injury occurred when she hit her back while retrieving a pan.

The carrier in its appeal contends that there is no credible evidence to support the hearing officer's determination that there is a causal relationship between the claimant's (date of injury), injury and the symptoms she began experiencing on (date). When reviewing a "no evidence" point of error, we examine the record for evidence that supports the finding while ignoring all evidence to the contrary. INA of Texas v. Howeth, 755 S.W.2d 534 (Tex. App.-Houston [1st Dist.] 1988, no writ).

In this case the hearing officer summarized the evidence upon which he based his decision, which included the claimant's uncontroverted testimony of a work-related injury to the same part of her body on which she subsequently had surgery, which injury was reported to her employer; complaints of low back pain in late (year), which were reported to a doctor (her gynecologist); and claimant's testimony that she performed no other strenuous activity, other than her job, between (date of injury), and her sudden onset of pain in May of 1992.

The problem in this case, as the hearing officer recognized, is establishing a causal connection between the injury of (month year)--which clearly was of such kind and character as had to do with and originated in the employer's work, and was suffered while the employee was engaged in or about the furtherance of the employer's affairs, Dallas County v. Romans, 563 S.W.2d 827 (Tex. Civ. App.-Tyler 1978, no writ)--and the symptoms which manifested themselves in May of 1992.

Texas courts have addressed cases in which an employee experienced delayed manifestations of symptoms from a clearly compensable injury. Texas Employers Insurance Association v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ) concerned an employee who undisputedly fell from the bed of a truck, suffered bruises and contusions, but lost no time from work. The employee suffered continued pain from

the incident, as well as blackouts and numbness, but continued to work at a series of jobs. Shortly after the incident the claimant saw a doctor who gave him some pills; several months later he was hospitalized for a stomach ulcer (with no record of complaints of back, shoulder, leg, or hip pains), and he also was seen by an orthopedist who believed his leg and back symptoms were related to obesity. He also was seen by two subsequent doctors and had vascular surgery some nine months after his original injury; both doctors found no relationship between the claimant's condition and his accident at work.

In upholding the lower court's decision in the employee's favor, the court of appeals noted that "There is no fixed rule of evidence by which a claimant is required to establish the fact that he has suffered an injury which caused disability, and the extent and duration of the disability received from an injury is at best an estimate which must be determined by the trier of the facts from all pertinent evidence before it . . . . It is well settled that the factual testimony of the claimant and other lay witnesses can support a finding of disability even though the lay evidence may be contradicted by the testimony of medical experts (citations omitted)."

See also Liberty Mutual Insurance Company v. Rodriguez, 537 S.W.2d 522 (Tex. Civ. App.-San Antonio 1976, no writ), where the court quoted authority for the proposition that "the fact that an employee continues to work after she is injured is not controlling on the question of total and permanent incapacity, but this is one fact to be considered by the trier of fact along with other facts and circumstances introduced in evidence."

The Appeals Panel also has considered many cases in which a claimant experiences immediate symptoms from an injury, but there are later manifested symptoms relating to another part of the body. As this panel wrote in Texas Workers' Compensation Commission Appeal No. 92160, decided June 8, 1992, in a case concerning whether a claimant sustained a back injury at the same time he sustained a hernia injury, "In a case such as this where the subject of inquiry is not so scientific or technical in nature as to require expert testimony to establish causation, lay testimony and circumstantial evidence may combine to establish a causal connection between the employment and the injury."

Applying the foregoing to the facts before us, we find that the testimony of the claimant as to the original injury, her continued complaints of pain, her reports of low back pain to a doctor (albeit based on her belief at the time that it was gynecologically related), and her ultimate diagnosis together with Dr. B's opinion relating the back pain to the injury in (month year), provides sufficient evidence upon which the hearing officer could have based his decision. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). He is entitled to resolve conflicts and inconsistencies in the evidence before him, Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.), and is equally entitled to judge the weight to be given expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). While the evidence may have led a different fact finder to another conclusion, that fact alone is an insufficient basis upon which to reverse, so long as the record contains evidence to support the decision of

the hearing officer. Garza v. Commercial Insurance Company of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge