APPEAL NO. 93849

This appeal arises under the Texas Workers' Compensation Act (1989 Act) TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.C.S.A. art. 8308-1.01 *et seq.*). On June 15, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue determined at the contested case hearing was whether claimant had "current disability" as a result of her injury on (date of injury), which was sustained in the course and scope of her employment with the self-insured governmental entity listed above, which shall be referred to both as "employer" and "carrier" hereinafter. The hearing officer held open the record to allow the claimant to be examined by a doctor appointed by the Texas Workers' Compensation Commission (Commission) pursuant to art. 8308-4.16(a) (now Section 408.004(a)); the record closed August 23, 1993. The hearing officer determined that claimant began to have disability from her injury on April 5, 1993, continuing to the date of the hearing.

The carrier has appealed, arguing that the evidence was insufficient to prove that claimant's back was injured during the accident that occurred (date of injury), such that the hearing officer could find that claimant had disability as a result of that injury. The carrier recites what it believes to be contradictory testimony from claimant that impugns her credibility. The carrier points to the lack of medical records for a large portion of the period of time between the accident and the date of disability found by the hearing officer.
The claimant responds that the decision should be affirmed, and argues that the lack of medical records resulted in part because the carrier refused payment for medical treatment.

DECISION

We affirm the hearing officer's decision.

The claimant was injured while driving a van with her employer's clients. The van turned on its side, and claimant stated that she struggled to get out of her seat belt in order to help the clients. That day, and on April 3, 1992, claimant went to the emergency room of (hospital). On her first visit, she was diagnosed and treated for contusions on her legs and lower abdomen. On her second visit, the diagnosis was lumbar strain. The hospital had x-rays taken of her pelvis, although not of her back, and the pelvic x-ray was normal.

The claimant stated that she missed a week from work after this accident, and returned to work, missing a day or so until she was terminated for client abuse on August 18, 1992. She stated that she continued to be in pain throughout this period, and experienced increasing inability to get around and do work around the house through December 1992. Claimant stated that after she was terminated she filed for unemployment benefits (which she did not get) and looked for employment in September. Her pain finally got so bad she decided she would not be able to work and consequently did not pursue appeal of the denial of her unemployment compensation. In December she contacted the Commission in order to file a claim and seek medical treatment, but stated that she did not get the proper forms from the Commission until sometime in February.

The claimant identified the carrier's failure to pay for medical treatment as her primary reason for not obtaining medical treatment earlier. In March 1993, she began treating with (Dr. H), D.C., who took x-rays of her back and diagnosed lumbar intersegmental dysfunction and disc degeneration. Dr. H stated that he believed this condition to be related to her 1992 injury. Dr. H took her off work for this condition effective April 5, 1993. Claimant stated that Dr. H has taken her off work every thirty days after this, and she remained off work at the time of the hearing. A friend of claimant's testified that he has paid for Dr. H's treatment.

(Dr. B), M.D. was appointed by the Commission at the request of the hearing officer and ordered an MRI. This was taken on July 1, 1993, and was interpreted as showing a disc herniation at L5 and a transitional lumbar vertebral body, along with osteophyte formation. No spondylolysis or spondylolisthesis was detected, although it was observed that the spinal canal from L3 through S1 was congenitally small. Dr. B recited claimant's history and stated that he felt her "disabilities" were related to her job-related injury of March 1992.

A coworker of claimant's, (TN), was called as a witness by the carrier. TN agreed that claimant had asked on occasion for assistance with her work. Although claimant had done this prior to her accident, TN indicated that her requests for assistance were more frequent after the accident.

At the beginning of the hearing, the parties stipulated that claimant "was injured" on (date of injury). There was no issue regarding the scope of that injury. Medical records from the emergency room indicate that claimant was treated for a lumbar strain. Her testimony indicated growing pain and limitations on her functions around the house. Dr. H stated his opinion that claimant's back condition related to her accident. This is sufficient to support the hearing officer's conclusion that claimant's inability to work stemmed from her stipulated injury. (Although this was Dr. B's conclusion as well, the hearing officer announced prior to his appointment that he would use Dr. B's opinion solely for diagnosis of a physical condition). The hearing officer's finding that April 5, 1993, was the beginning of disability is supported by the fact that Dr. H took her off work effective that date.

The hearing officer is the sole judge of the relevance, the materiality, weight and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The testimony of a claimant alone is sufficient evidence to support that claimant sustained injury. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). 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.).

Although there were conflicting portions of the evidence, these were for the trier of fact to weigh. His determination that claimant had disability is supported by the record, and we affirm.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge