APPEAL NO. 93914

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S Article 8308-1.01 *et seq*.). Following a contested case hearing held in (city), Texas, on September 8, 1993, hearing officer (hearing officer) determined, with regard to the single issue before him, that the claimant was injured in the course and scope of her employment on (date of injury). The appellant, hereinafter carrier, contends that the hearing officer's decision is against the great weight and preponderance of the evidence, as the evidence in the case was that claimant suffered pain but there was no objective medical evidence of physical damage. The respondent, hereinafter claimant, states that the hearing officer acknowledged confused and contradictory medical and lay evidence, but found claimant's evidence to be credible; claimant further states that her medical records show a clear and consistent pattern of treatment consistent with a diagnosis of lumbar strain/sprain.

DECISION

We affirm the hearing officer's decision and order.

The claimant, who was employed by (employer), testified that near the end of the work day on (date of injury), as a box she was lifting slipped and she lifted her leg to keep it from falling, she experienced pain in her lower back. She said she tied a jacket tightly around her waist to help with the pain and finished out her shift. Claimant went home after work and told her mother she had hurt her back and was in pain. Later that evening she went to the emergency room (ER) at Methodist Hospital; the ER report described claimant's symptoms in pertinent part as follows: "she has had low back pain all day long, and it became worse this evening . . . She states that there was no injury today. She also states that she has had burning with the passage of urine for the last two days but denies frequency . . . ." The claimant denied saying there was no injury, said she told hospital personnel about the incident at work, and said she told them she had felt burning upon urination only that day. A handwritten admission record shows claimant's presenting complaint as "urinary burning," but also shows complaints of back pain and chills. The claimant said she underwent tests and was given prescription medication for "back spasm." She said the doctor told her she did not have a kidney infection.

On May 21st claimant told her supervisor, (Mr. C), that she had hurt herself and gave him a slip from Dr. Moyer, the ER doctor. Mr. C recalled only that claimant told him she had seen a doctor and was taking medication that might make her drowsy and that he thought she just had a kidney infection. The claimant contended she told him her injury was work related. However, timely notice of injury was not an issue in this case.

Because she continued to have pain, the claimant said she returned to the ER on May 28th. On that date the report of the ER doctor, (Dr. A), noted claimant's complaint of low back pain continuing for approximately eight days "and she did some lifting at that time." X-rays were negative, and the assessment was back pain, probable lumbar strain, although the report stated Dr. A could not rule out a herniation. The claimant was given medication

and taken off work with instructions to rest in bed for three days.

The claimant returned to the ER again on June 1st with a complaint of continued back pain. (The report shows the claimant stated she injured her back on (date), and had had pain since that time.) The ER physician, Dr. B, stated that a lumbar CT scan failed to reveal disk disease or tumor.

On June 8, 1993, the claimant began treating with (Dr. E). On that date Dr. E diagnosed lumbar sprain, prescribed physical therapy and medication including an anti-inflammatory and a muscle relaxant, and projected that the claimant would reach maximum medical improvement in four weeks and could return to work in two weeks. Because Dr. E was concerned that claimant's back pain could be caused by an abdominal aortic aneurism, he ordered a sonogram which turned out to be normal. Dr. E released claimant to modified duty work on July 28th, with which the employer stated its intention to comply. At the time of the hearing the claimant testified she was working, albeit a different shift.

The carrier's appeal refers us to numerous inconsistencies in the medical evidence, as well as in the claimant's testimony. The hearing officer addressed this in his discussion, in which he stated, among other things, that claimant was "an extremely poor historian" who was "confused over the most minor details," and that the medical records were "full of contradicting statements, some of which are the result of claimant's poor recall and lack of attention to detail." Nevertheless, the hearing officer wrote, the medical records do document a complaint of lower back pain that began on (date of injury), and he made a finding that claimant sought medical treatment for a lumbar strain/sprain and a conclusion that the claimant was injured in the course and scope of her employment on (date of injury). While we agree that the evidence was conflicting, the hearing officer in reaching his decision was exercising his authority as sole judge of the relevance and materiality of the evidence and of its weight and credibility. See Section 410.165(a). Moreover, where there are conflicts in the evidence the hearing officer is entitled to resolve them. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ).

The carrier further argues that there is no evidence of damage or harm to the physical structure of claimant's body, citing the 1989 Act's definition of "injury," Section 401.011(26), and contends that claimant's pain, though documented, is insufficient by itself to establish an injury. While we agree that mere pain alone is not compensable, *see* Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992, nevertheless in this case there was evidence, if credited by the hearing officer, of a medically diagnosed condition for which treatment was prescribed. Further, there was evidence in the form of the claimant's testimony, as well as in some of the medical reports, that such condition arose from the lifting incident at work. As the court said in Travelers Insurance Company v. Stretch, 416 S.W.2d 591 (Tex. Civ. App.-Eastland 1967, writ ref'd n.r.e.), "[d]amage or harm to the body of an employee originating in and having to do with his work and sustained while engaged in furtherance of the affairs of the employer are compensable." That court also cited case law for the proposition that a strain sustained by an employee in the course of his

employment is generally regarded as a compensable injury.

Our review of the evidence in the record leads us to the conclusion that the hearing officer's decision in this case is not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge