

APPEAL NO. 94099

On December 13, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. Section 401.001 *et seq.* (1989 Act). The appellant (carrier) appeals the hearing officer's decision that the respondent (claimant) was injured in the course and scope of her employment on (date of injury), and that the claimant is entitled to workers' compensation benefits in accordance with his decision and the provisions of the 1989 Act.

DECISION

The hearing officer's decision and order are affirmed.

The claimant is employed as a customer service agent for (employer). She testified that on (date of injury), she felt a pop in her back when she picked up a customer's 50-pound duffel bag. She said she felt pain in her back which went down one of her legs. It is undisputed that she immediately notified her supervisor of the injury and that a coworker took her to a hospital. On August 18, 1993, she began treatment with (Dr. R) who reported that the claimant had begun experiencing back pain six months earlier at work, but that on (date of injury) the claimant lifted a 50-pound bag and felt a pop with severe right leg pain. An MRI scan of the lumbar spine showed three-level degenerative disc disease and a high signal in the posterior annulus at L4-5 indicative of an acute annular tear. Dr. R stated that "[i]t is then possible as an acute event to propagate one of these tears through the annulus and develop a painful posterior annular tear in the absence of a disc herniation." Dr. R took the claimant off work and had not returned her to work as of the date of the hearing. The claimant received physical therapy for her back pain, but has continued to complain to Dr. R about back and leg pain.

A coworker testified that the day before the claimed injury the claimant told him that if her transfer was not approved she would have an on-the-job injury. The claimant said she did not recall that conversation and further testified that, while she knew her first request for transfer had been denied before her injury, she did not know on the day of her injury what the disposition was of her second request for transfer which had been made the day before the injury. The claimant's supervisor said that the claimant had complained of back pain the day before the claimed date of injury. She also said that on (date) the claimant told her she had made a second request for transfer. The supervisor said that it was not until (date), the day after the injury, that she was notified that there was an opening for the claimant at the requested transfer location.

Contrary to the carrier's assertion that the hearing officer did not consider and weigh the testimony of the claimant's coworker, the hearing officer specifically stated in his decision that all the evidence was considered and that his findings and conclusions were based on all the evidence presented.

The hearing officer judges the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer considers the conflicts and contradictions in the evidence and determines what facts have been established. The hearing officer may believe all, part, or none of the testimony of any witness. And, while the claimant is an interested witness, the hearing officer is entitled to believe her and find that she was injured at work based on her testimony. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). We do not set aside a decision of a hearing officer merely because different inferences may be drawn upon review of the evidence where, as in this case, there is sufficient evidence to support the finding that on (date of injury), the claimant injured her back lifting a customer's luggage, and where that finding is not against the great weight and preponderance of the evidence. The hearing officer's findings support his conclusion that the claimant was injured in the course and scope of her employment on (date of injury).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge