

APPEAL NO. 94277

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 8, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that respondent (claimant) was injured in the course of her employment on (date of injury), and had disability since August 12, 1993. Appellant (carrier) asserts that the evidence in support of the hearing officer is not credible and asks for reversal. Claimant replies that the hearing officer should be upheld.

DECISION

We affirm.

Claimant worked for (employer) as a sales clerk in housewares in (month year); she was found to have injured her back while putting dishes on a top shelf in which she had to reach above her head. She stated that she told her supervisor of the accident at the time, but the supervisor (Ms. B) testified in response to two questions about such notice at the time of the injury as follows:

She informed me that she had hurt her -- or had a back problem.

\* \* \* \* \*

Well, I -- to my knowledge, she was just informing me that she had hurt her -- her back was hurting.

There was no issue as to notice. The only issues at hearing were whether there was a compensable injury, and if so, whether claimant had any disability.

An affidavit from (Ms. BU) states that she worked for employer at the time and was a member of the safety team. She remembers claimant telling her of the injury that day, and she then paged Ms. B; claimant told Ms. B of the injury, and Ms. B commented she did not have an accident form to fill out. Ms. BU noted claimant did not go to a doctor then because it was night and "Stat Care" was closed.

Claimant testified that she was off work, as scheduled, the next two days and her back hurt during this time. She self-medicated at home but did not go to the doctor on either day. On the third day she returned to work, as scheduled, and was able to work. Her back then felt better, and claimant was able to work without absence attributable to the back for several months. She first saw a doctor about the injury in May 1993, after telling her employer that she needed to see a doctor because it was hard to turn her neck and an arm was numb. She went to Stat Care, where she was placed on light duty, and after a short time, she was referred to a neurosurgeon, (Dr. R). Claimant testified that Dr. R did tests and found that discs at C5-6 were impinging on the nerve.

Dr. R, in his deposition on written questions, said that he advised a diskectomy and fusion at C5-6. He added that an accident, such as described, can cause such an injury and he took claimant off work. Dr. R's Specific and Subsequent Medical Report indicates that he took claimant off work on August 12, 1993. Claimant also testified that Dr. R told her that it was possible for her to have little pain for a period and that the disc could keep bulging from her activity until it finally encroached on the nerve. Dr. R has not performed surgery because it has not been approved yet.

Claimant testified that she had no back or neck problem before the injury and had done nothing off work since then to hurt herself. She states that she cannot work (at the time of the hearing). She thinks that the pain she felt in May, when she went to Stat Care, was from the injury in (month year).

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Although there was no issue as to notice, the hearing officer could consider that claimant thought the injury trivial as a reason why she did not go to the doctor for several months. See Texas Workers' Compensation Commission Appeal No. 91120, dated March 30, 1992. In addition, Ms. BU's statement corroborated claimant's testimony of prompt notice referring to a particular event. Compare this case to Texas Workers' Compensation Commission Appeal No. 92543, dated November 23, 1992, in which a claimant received no benefits after failing to see a doctor for approximately one year and provided little explanation for his conduct after the injury. Claimant's referral to her doctor's explanation of the bulging of the disc over time was not refuted. The evidence was sufficient to support the hearing officer's finding that a compensable injury occurred.

With a compensable injury, the question of disability was then found in claimant's favor also. Dr. R in his records shows that he took her off work on August 12, 1993. Claimant testified she could not presently work. The hearing officer was sufficiently supported by this evidence in finding that claimant had disability since August 12, 1993.

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Alan C. Ernst  
Appeals Judge