APPEAL NO. 950153
FILED MARCH 15, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 2, 1995, a contested case hearing was held to consider the single issue of whether appellant (claimant) sustained a compensable injury on _____. The hearing officer determined that claimant did not carry her burden of proving that she sustained a compensable injury. Claimant appealed essentially arguing that the hearing officer's determination is against the great weight of the evidence. Respondent (carrier) urges affirmance in its response, arguing the sufficiency of the evidence in favor of the hearing officer's decision and order.

DECISION

We reverse the hearing officer's decision and render a decision that claimant sustained a compensable back injury on _____.

Claimant testified that on _____, she was employed as a tester by (employer) and had been with employer and its predecessor company for over 13 years. Claimant stated that on _____ she was working the third shift (from midnight to 6:30 a.m.) and was training another employee. Thus, two people were working at the testing station, where claimant generally worked by herself. She testified that the woman that she was training was heavyset, which resulted in there being even less room in which to work. Claimant testified that generally the computer units that she tested came down the line and rolled off onto the testing station. When the testing was completed she would pick up the tray and carry it about five or six feet to another conveyor line, which transported the unit to another part of the factory. However, on _____, claimant stated that she bumped into the other woman with whom she was working a couple of times; thus, she was not able to carry the tray at waist height as she usually did, but instead had to lift each unit up to about shoulder height and then step sideways in order to place it on the conveyor without bumping into her coworker. Claimant testified that as the evening passed, she developed severe pain in her low back. At about 4:00 a.m. or 4:30 a.m. claimant told the lead man, (Mr. R), that her back was hurting and she needed some aspirin. Claimant further stated that after she returned from taking the aspirin, she did not do any more work but instead sat and observed. In addition to Mr. R, claimant testified that she told (Mr. G) about her back pain on _____.

Claimant testified that on (day after date of injury), she went into work, told Mr. R that her back pain had not improved and asked for a couple of nights off. Her request was granted and she was given Thursday and Friday off. On Friday, claimant returned to the employer's premises, reported that her back injury was work related, and asked to see the company doctor. She was seen by (Dr. H) on (2 days after date of injury), who diagnosed lumbar sprain/strain. Dr. H returned claimant to work with a lifting restriction of 20 pounds. On August 12th, claimant returned to the clinic and was treated by (Dr. T), who recommended therapy and treatment. Claimant elected to continue her treatment with a

doctor of her own choosing, (Dr. M), a chiropractor. Dr. M initially diagnosed lumbosacral sprain, lumbar facet syndrome and lumbar myofacial pain syndrome. Dr. M referred claimant for an MRI on September 23, 1994, which revealed:

1) Disc protrusion at L4-5 and L5-S1, most prominent at L5 on the right with dural sac deformity. That protrusion measures 5 mm.

2) Disc desiccation at L4-5 with narrowing of the interspace.

In a report of October 28, 1994, Dr. M stated:

> It is my opinion, with a reasonable degree of medical probability based upon history, examinations, radiographs and lumbar MRI findings, that the patient did sustain lumbar injury as a result of the _____ lifting injury. It has been my experience, based upon treatment of cases similar to this, that a lumbar disc protrusion of 5mm with concurrent dural sac deformity will result in symptomatology consistent with the patient's complaints. The patient denied low back pain prior to the reported injury, therefore the onset of lumbar pain after rotational, lifting injury is consistent with being the causative etiology for the patient's lumbar discopathy.

Finally, claimant submitted a statement from Mr. G, which stated that on _____, claimant worked at a work station across from his, that he observed her working and that she told him she had hurt her back that evening. Specifically, Mr. G provided in relevant part:

> I watched what she was doing for a while and saw she was lifting the units around another coworker and this may be what was causing her back to hurt. She was bring [sic] the unit up to about shoulder height then carrying them to the line which is about five to six feet away from her on the other side of the coworker.

Under the 1989 Act, it is well settled that the claimant has the burden of proving that she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the trier of fact and is the sole judge of the relevance, materiality, weight and credibility of the evidence. Section 410.165(a). A finding of fact by a hearing officer should not be overturned unless it is so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). "On appeal, in determining this sufficiency question, all evidence admitted must be considered and objectively discussed in sufficient detail to demonstrate that the correct standards of review have been followed." Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991 (citing Sells v. Texas

Employers' Ins. Ass'n, 794 S.W.2d 793 (Tex. App.-Tyler 1990, writ denied); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cropper v. Caterpillar Tractor Co, reversed and remanded on remand, 767 S.W.2d 813 (Tex. App.-Texarkana 1989, writ denied)).

In this instance, the hearing officer determined that claimant had not carried her burden of proving a compensable injury. In so doing, the hearing officer noted that claimant's testimony was "internally inconsistent" and did not "support a finding of repetitive trauma." We note that the hearing officer did not identify specific instances of internal inconsistencies and our review of the record does not reveal any internal inconsistencies in claimant's testimony. To the contrary, claimant consistently maintained that she injured her low back at work on _____, because she was required to modify the manner in which she performed her duties to work around the other employee who was also working at the testing station, noting that generally she carried the computer units she tested at waist level but on _____ was required to carry them at shoulder level.

In addition to our not finding significant inconsistency in claimant's testimony, we note that it is largely corroborated by the other evidence in the record. In his statement, Mr. G provides that he observed claimant working on _____ and corroborated that claimant was lifting and carrying the units at shoulder level, rather than waist level. In addition, Dr. M's causation opinion is corroborative of claimant having sustained a work-related injury. Although we note that a doctor's recitation of the history of an injury is not competent evidence that an injury in fact occurred (Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ)), we observe that Dr. M could and did opine, in his October 28, 1994, narrative report, that claimant's back injury, which was confirmed by the MRI, was consistent with the on-the-job lifting activity described by the claimant. In his opinion, based upon reasonable medical probability, he determined there was a causal connection between the injury and the work.

In this instance, we believe that the evidence "establishes a sequence of events providing a strong, logically traceable connection between cause and result, Griffin v. Texas Employers Insurance Association, 450 S.W.2d 59 (Tex. 1969), and supports a determination that claimant was injured in the course and scope of [her] employment." Texas Workers' Compensation Commission Appeal No. 94571, decided June 20, 1994. In addition, we further find that the evidence of such injury is "so strong, uncontroverted, and convincing as to render [the hearing officer's] finding [of no injury] so against the great weight and preponderance of the evidence as to be clearly wrong." Texas Workers' Compensation Commission Appeal No. 92386, decided September 8, 1992. While we are mindful of the great deference generally accorded the hearing officer's factual determinations, and recognize that we do not substitute ourselves as fact finders, where, as here, a thorough review of the evidence "compellingly leads us to conclude that the evidence in opposition to a finding is so great in weight and preponderance against the finding, we must set aside such finding on a legal sufficiency basis." Texas Workers'

Compensation Commission Appeal No. 93436, decided July 16, 1993; Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992.

The hearing officer's decision and order are reversed and a new decision and order are rendered that claimant is entitled to workers' compensation benefits under the 1989 Act for her injury of _____.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge