APPEAL NO. 980196
FILED MARCH 6, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 29, 1997, a contested case hearing was held. [The hearing officer] determined that appellant (claimant) was not injured at work on _____. Claimant asserts that her testimony and medical reports indicate that she sustained an injury on _____, and that her condition is not a continuation of her 1991 injury. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant testified that she worked for (employer) and has done so for 15 years. She stated that she has been injured in 1990, 1991, 1992, and 1994, prior to the injury she reported as having occurred on _____. She stated that her injuries in the past have included her leg and back but that she has never injured her hip before. She described her injury as pain felt after having worked at one machine that is a "little lower" than the others; she added that she had to lean forward while working at it. She was still working at the time of the hearing. She also indicated that when she got through with the machine in question she could not walk fast.

Claimant's medical evidence included a note of (Dr. G), who saw claimant on June 17, 1997, on referral from (Dr. F). She refers to a recent acute pain claimant felt as she tried to rise from her chair at work. She described the pain as in the low back and down the right leg. Dr. G's impression was "probably a right lumbosacral . . . muscular sprain." On July 17, 1997, (Dr. P), in an Initial Medical Report stated that on _____, claimant injured her back, hip, and leg while working at a low machine at which she had to reach for material. Dr. P said that claimant's "former low back injury is different" noting the hip and right leg pain now present.

A statement from (Ms. H), apparently a nurse for employer, indicates that claimant on June 11, 1997, reported an injury but did not describe any traumatic event such as twisting, turning, or lifting and denied knowing what caused the injury. Ms. H also commented that claimant was able to walk and sit normally. A doctor's note of Dr. F dated (one day after the alleged injury), refers to the 1991 injury and says that claimant reported "severe pain more so over the right hip area, increasing with work activity with limited range of motion [ROM], weakness & problems sleeping due to condition." (Emphasis added.) Dr. F also noted that he would refer her to Dr. G to "give credence to her case," referring to "gaining acceptance with carrier" and in this context also refers to her "poor response to treatment." He then stated, "if not, 6-26-97 will be last appt. here as insurance carrier will no longer pay." Prior to the June entry, Dr. F had seen claimant in February 1997 for "increased pain of spine . . . radiating to arms/legs with weakness, limited [ROM] &

problems sleeping." (Emphasis added.) Dr. F noted in February that claimant could not wait until her April appointment because of the pain.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. A question of whether a painful condition is a continuation of a past injury or is an injury itself is a question of fact for the hearing officer to decide. In reaching a decision, the hearing officer may consider whether a claimant had been receiving treatment for the past injury to the time of the alleged injury and may question whether there has been a new incident that could cause injury. *See* Texas Workers' Compensation Commission Appeal No. 950125, decided March 10, 1995. The hearing officer could also read the note of Dr. F of June 11, 1997, as not indicating an injury had been reported relative to the day before but said that claimant merely reported pain in her hip area whether at work or not, adding that the pain increased when she worked. The hearing officer could compare the references to ROM and sleeping as being not unlike those made several months before in treatment for the 1991 injury. While Dr. P, especially, was of the opinion that claimant was injured on _____, the hearing officer could reasonably choose to give more weight to Dr. F's note made one day after the alleged incident than she did to Dr. P's note more than a month after the incident. The evidence sufficiently supports the determination that claimant did not show that she sustained an injury on _____.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge