

APPEAL NO. 980208
FILED MARCH 20, 1998

Following a contested case hearing held, on December 17, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability because she did not sustain a compensable injury. Claimant has appealed on evidentiary insufficiency grounds. The respondent (carrier) urges the sufficiency of the evidence to support the decision.

DECISION

Affirmed.

Claimant, who indicated that she had worked in shoe sales for 25 years, testified that on the Sunday before Friday, _____, she read the newspaper sitting in bed and that for several days thereafter her back was stiff and sore but had improved by midweek; that at about 9:30 a.m. on the morning of _____, as she attempted to lift a red plastic file cabinet near the cash register at the shoe store where she was employed, her back "popped" and she dropped the cabinet back onto the floor; and that the store's co-owner, (Ms. F), was standing behind her at the time and said words to the effect, "here, let me help you." Claimant said that her back pain increased throughout the morning and that after having great difficulty with near paralyzing back pain in the bathroom, she was taken by a friend to a hospital emergency room (ER) where she was treated and released. The ER record stated that claimant said she may have injured her back on Sunday. Claimant insisted that she also told the admissions clerk about the lifting incident at work. She said that she stayed home for three days pursuant to the doctor's direction; that when she returned to work, the owners were upset about having to pay for three days of sick leave; that on or about November 29th, her hands became numb and she was referred to the Texas Back Institute, and that the store's other co-owner, (Mr. F), "went ballistic." She said her employment was terminated for alleged insubordination on December 9th but that she felt it was because of her injury and that she contacted an attorney. She also said she contacted the Texas Workforce Commission in February 1997 and represented that she was available for full-duty work and that she has looked for work.

Ms. F testified that claimant told her on the Monday before _____, that she had stayed in bed the previous day reading the newspaper and that her back was hurting. Ms. F said she advised claimant not to vacuum or lift boxes. She said claimant's back never got better during the week and that claimant complained about her back even on November 7th. Ms. F further testified that claimant gave no indication that she hurt her back at work on _____, that although the store has tan plastic file cabinets and blue ones, she could not recall there being a red one, that she did not see claimant pick up a file cabinet on

_____, and that she did not offer to help claimant pick up a file cabinet after claimant's exclaiming about hurting her back.

Coworker (Ms. S) testified that claimant told her about reading the newspaper in bed on Sunday and having a sore back, that she helped claimant at work during the week, and that when claimant returned to work after visiting the ER, she never heard claimant mention lifting a file cabinet or hurting her back on the job.

A February 13, 1997, MRI revealed an epidermoid cyst or dermoid cyst in the sacral spinal canal at the S2 level. On February 25, 1997, (Dr. M), claimant's neurosurgeon, diagnosed a small herniated disc at L5-S1, a congenital sacral intracanal dermoid, and thoracic spine pain of unknown etiology. He wrote on October 7, 1997, that claimant has been unable to work since 1996, that had she attempted to return to employment in shoe sales, she would have been unable to lift more than 25 pounds, and that he would have restricted her from performing repetitive bending and lifting even of lighter objects. A November 16, 1997, MRI revealed the dermoid cyst at the S2 level and that the small disc protrusion at L5-S1 had decreased in size. Dr. M wrote on November 20, 1997 that neurologically, claimant still has excellent strength and symmetric reflexes, that he questions a lesion at L5-S1 which does not touch the exiting L5 nerve root, that the disc herniation is not present but rather a mild bulge, and that he is "beginning to believe that her main problem is related to her dermoid cyst at this point."

The hearing officer found that on _____, claimant did not sustain an injury in the course and scope of her employment while lifting a red plastic file cabinet, and that due to the claimed injury she was unable to obtain and retain employment at wages equivalent to the preinjury wage beginning December 8, 1996, and continuing through the date of the hearing. Based on these findings, the hearing officer concluded that claimant did not sustain a compensable injury on _____, and did not have disability because she did not sustain a compensable injury. In her appeal, claimant mentions some of the evidence is in conflict and states the following, without citation to authority: "The common law of the State of Texas, as it relates to proof, has been clear that where evidence is conflict, the employees [sic] testimony should be given great weight and all doubt should be resolved in favor of the Claimant."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We are satisfied that the evidence is sufficient to support the hearing officer's finding on the injury issue. He could credit the evidence which indicated that claimant did not hurt her back lifting a red plastic file cabinet at work on _____, and although he found that claimant was unable to work after December 8, 1996, due to the claimed injury,

since he determined that claimant did not sustain a compensable injury, she could not have disability as defined in Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Elaine M. Chaney
Appeals Judge