

APPEAL NO. 980302
FILED MARCH 27, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 13, 1997, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether she had disability. The hearing officer determined the claimant did not sustain a compensable injury on _____, and consequently did not have disability. In Texas Workers' Compensation Commission Appeal No. 972140, decided December 3, 1997, the Appeals Panel remanded the case for underlying findings supportive of the decision noting that "factual findings made to support the ultimate conclusions reached [were necessary], particularly where the total evidence would appear to make out a *prima facie* case." The hearing officer deemed that no further hearing was necessary and issued a new Decision and Order dated January 22, 1998. In this new Decision and Order, the hearing officer makes findings that the claimant did not injure herself at her place of employment on _____, that the claimant was not credible, that her supervisor was credible, that the doctor connecting claimant's injury to an incident on _____, was "given very little weight" because he based his opinion on claimant's version of events, that the "scenario revealed in the record aroused suspicion" as to claimant's motives in filing this claim, and that the claimant failed to meet her burden of proof. The claimant has appealed urging that the hearing officer has failed to make findings of fact as directed in the remand and that the decision is contrary to the greater weight and degree of credible evidence. The respondent (carrier) urges, in essence, that the hearing officer is the sole judge of the weight and credibility of the evidence and that the evidence is sufficient to support the hearing officer's decision.

DECISION

Reversed and a new decision rendered.

Our prior decision, Appeal 972140, *supra*, fully sets forth the pertinent evidence in this case and will only be touched on here. In that decision we expressed concern with the lack of underlying and objective findings of fact in support of the conclusory finding that no injury occurred, particularly in view of the evidence apparently showing a *prima facie* case of a compensable injury. The hearing officer now states as new findings of fact that she does not find the claimant credible, does find the supervisor, Ms. Y credible, does not give much weight to Dr. A opinion (noting the doctor was not present on March 18th) because it is based on claimant's version of events, and there are suspicious circumstances concerning motive. While the hearing officer may well find that the claimant (or what history she gave her doctor) was not credible and that the testimony was not entitled to much weight, these are not underlying objective facts

leading to the ultimate finding and conclusion of no injury given the other evidence of record.

What is clear from the evidence is that the claimant appeared to be in pain and could not straighten up when attempting to lift a box containing personal items while at work on _____. Even if the claimant's testimony is totally discounted, there were witnesses to the incident including Ms. Y who was present in the vicinity of the incident and verified what claimant states and independently states that she, the claimant, was trying to pick up the box by herself and "the next thing I know she said she could not move, was stuck in one position and" another person pushed a chair over to her and she sat down hard. Aside from Ms. Y's testimony, which the hearing officer specifically found to be credible, a radiologist was called and the claimant was immediately taken to the emergency room (ER) which was in the nearby vicinity. The ER medical records reflect the incident, record a diagnosis of acute myofascial strain–lumbar, acute low-back pain, show treatment, including an injection and prescription for medication, and contain a notation on discharge to see her doctor if discomfort continued and that Dr. A would be in his office the following Monday (March 24th). Dr. A's subsequent medical record regarding the incident are in accord with the ER reports, quite apart from the claimant's testimony, and also in accordance with the other evidence as to the mechanics of the incident. As set out in more detail in our prior decision, the claimant first went to Dr. A's office on March 26, 1997, subsequently had diagnostic tests performed, herniations in the cervical area were found, and surgery subsequently performed.

Clearly the claimant has the burden of proof to show a compensable injury, and while disbelieving a claimant concerning the sustaining of an injury, may well defeat a claim, here, even discounting the claimant's testimony, the overwhelming evidence established a compensable injury. This evidence consists of the testimony of Ms. Y, the circumstances surrounding the incident including its being witnessed, the immediate examination and treatment in the ER resulting in a medical diagnosis of an injury as stated, the close follow-on examination and treatment in Dr. A's office and later Dr. A, the diagnostic tests showing the herniation, and the subsequent records of the surgery. While the claimant, a 27 plus year employee, may well have been terminated for good cause and was found to be of doubtful credibility, and may have had other personal problems and difficulties in her life and employment, this does not, per force, defeat a claim that is otherwise shown by the overwhelming weight of the other evidence. With no underlying factual findings, as we expressed our concern previously, and now hold, the determinations of the hearing officer that the claimant did not sustain her burden of

proof and did not injure herself while at her place of employment on _____, and that she accordingly did not have disability, are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ) and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the decision and order are reversed and a new decision rendered that the claimant did sustain a compensable injury as claimed on _____, and that she did have disability.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge