

APPEAL NO. 990054

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 December 29, 1998. The issues before the hearing officer involved whether the respondent (claimant) sustained a specific compensable injury on _____; whether she had disability from this injury; and whether the appellant (carrier) waived the right to contest compensability of the injury.

The hearing officer held that the carrier did not waive a dispute of compensability of this injury and this was not appealed. The hearing officer found that the claimant had sustained a compensable injury on _____. However, he specifically found that this injury was a lumbar strain, which he stated was "separate from claimant's pre-existing arthritis and degenerative conditions." He further found that the claimant had disability from her injury for the period from August 13 through October 31, 1997, and from November 20, 1997, through December 29, 1998.

The carrier has appealed. The carrier argues that the claimant should be bound by certain findings of fact in another CCH proceeding in which several of the same facts were covered in her testimony. The carrier argues that the claimant failed to prove that she was injured on _____, while at work, and that the problems she is having relate to underlying, non-work-related conditions. The carrier further argues that there is no evidence of "any" disability as a result of a _____, injury. There is no response from the claimant.

DECISION

Affirmed.

The claimant was employed as a decorator by (employer). She stated that as she was unpacking merchandise from a large box on _____, she felt a "pop" in her lower back. She continued to work, although she maintained that she was essentially "showing up," until she sought medical treatment on August 13, 1997. Claimant was taken off work at this time. She said that light-duty work was not offered by her employer.

The claimant said she went back to part-time cashiering work for (another employer) for the period November 1 through November 19, 1997. She said she quit because she was physically unable to continue.

There was evidence that the claimant had been involved in an automobile accident in 1993 and was treated for injuries to her back and neck. There was evidence that she continued to be treated for back pain until shortly before her injury. There was evidence that the claimant had degenerative disease and arthritis in her spine. The claimant was 60 years old at the time of her injury.

We will greatly summarize the medical evidence. Claimant went through a gap in her medical treatment from around the time the carrier filed a dispute, September 8, 1997, until May 1998, when she undertook treatment with Dr. B and then Dr. W. The treatment included physical therapy as well as prescriptions. She was treated for lumbar strain, but also for problems relating to her cervical area and upper extremities. The claimant asserted at the CCH that her neck and a carpal tunnel syndrome (CTS) represented her compensable injury. But when the hearing officer asked her at the end of the testimony to clarify what parts of her body she contended were injured on _____, in the incident she described, she said that the region injured was her lower back.

The medical records indicate that she received therapy and treatment involving her lower back sometime through July 1998. The medical treatment began to focus in on her cervical area and shoulder. Dr. W's Specific and Subsequent Medical Report (TWCC-64) filed on July 8, 1998, describes the diagnosis solely with relation to her cervical area and to bilateral CTS.

When claimant was asked if she could work, she stated she could not and attributed this in large part to a neck injury and to her CTS and related headaches. However, she also testified that her lower back continued to cause pain and that she could not bend or stoop as a result.

Finally, we note that it was brought out at the CCH that the claimant had previously filed, and had adjudicated, the matter of whether she was injured at this same job through repetitive trauma. The hearing officer decided in January 1998 that she was not. The Appeals Panel affirmed this decision in Texas Workers' Compensation Commission Appeal No. 980414, decided April 10, 1998. However, the matter before that hearing officer was limited only to the matter of whether there was an occupational disease/ repetitive trauma injury. As the transcript of the earlier record (a carrier exhibit in this record) establishes, the attempt of the claimant in the earlier hearing to include the issue of a specific injury was opposed by the carrier and it was not added. The "res" of a specific injury was therefore not adjudicated.

There was a "statement" in the record, consisting of a typed transcript of what was put forth as an interview with Mr. K, but has only been signed by a person who contends it is an accurate transcription. This statement, let in over objection from the claimant, indicated that within a couple of days after the contended injury, claimant told Mr. K that she hurt herself helping a friend move.

We first note that the hearing officer has found that claimant had only a lumbar strain as a result of the _____, injury. To the extent that he acknowledges in the same finding of fact that she had preexisting conditions, he, by implication, rejected the contention that any cervical or CTS injuries alluded to by the claimant can be attributed to this injury as opposed to the preexisting conditions. This was not appealed by the claimant. In reviewing the record, we agree that there is sufficient evidence to support the

occurrence of this specific injury on _____. We decline to find that the hearing officer in his consideration of this record was necessarily bound by the determinations of the earlier decision that were made for a repetitive trauma injury with an issue specifically limited to that type of injury in part because the carrier did not agree to expand the issue reported from the benefit review conference. In any case, any opinion held by the previous hearing officer that there was a preexisting low back injury is not necessarily antagonistic to the hearing officer's determination in this case that she sustained a lumbar strain on _____.

The interplay of any preexisting conditions is most significant to the issue of disability in this case. It is true that medical evidence, taken alone, would support the lumbar injury as a producing cause of disability through July 1998. However, a claimant's testimony alone may establish that an injury has occurred and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ). Claimant testified that as of the date of the CCH she could not bend or stoop and still had back pain, which were part of the reason she was unable to work. The burden was on the carrier to prove that the non work-related condition was the "sole cause" of disability. National Farmers Union Property and Casualty Company v. Degollado, 844 S.W.2d 892 (Tex. App.-Austin 1992, writ denied). The hearing officer could chose to believe this testimony. Accordingly, finding sufficient support in the record for the fact findings and decision of the hearing officer, we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge