

APPEAL NO. 990072

On December 2, 1998, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether appellant (claimant) sustained an injury in the course and scope of her employment on _____; (2) whether the respondent (carrier) is relieved of liability under Section 409.002; and (3) whether claimant has had disability. Claimant requests reversal of the hearing officer's decision that she did not sustain an injury in the course and scope of her employment on _____, and that she has not had disability and requests that a decision be rendered in her favor on those issues. Carrier requests affirmance. There is no appeal of the hearing officer's decision that carrier is not relieved of liability under Section 409.002 because claimant had good cause for not timely notifying her employer of an injury. However, since the hearing officer determined that claimant did not sustain an injury in the course and scope of employment, he ordered that the carrier is not liable for workers' compensation benefits.

DECISION

Affirmed.

Claimant worked in the employer's medical laboratory drawing blood from patients. She testified that on Friday, _____, she bent over and pushed at the bottom of an eight-foot-tall bookshelf to push it against a wall in a room at work as part of an office rearrangement that was in progress and that, when she did that, three-inch notebook binders filled with papers, which the parties referred to as books, fell off of the bookshelf and struck her right shoulder, mid back, and lower back. Claimant was alone in the room when this occurred. She said that the bookshelf did not fall over and that the books did not knock her down, but that she did put her hands down. She said that VM, the office manager, came into the room and she told VM that the books fell on her and that she, claimant, then picked up the books. Claimant said that she and VM were the only ones at work that day. Claimant said that on Monday, (three days after the date of injury), when EM, the laboratory supervisor, returned to work, she told EM that the books had fallen on her and that her back hurt. She said that she never had back problems before the books fell on her and that after that she would occasionally have back pain and would complain to EM about that. Claimant said she continued to work and did not think her back problem was serious until a few days before August 31, 1998, when she was unable to move and needed help getting up after sitting on a bench at a football game. The parties stipulated that claimant continued to work until August 30, 1998. Claimant said she went to a doctor on August 31, 1998.

Medical records reflect that claimant went to a medical clinic on August 31, 1998, and reported that she was injured when books fell on her at work on _____, and that she had not had back problems prior to that. Claimant said that the doctor at the clinic took her off work. An MRI of the claimant's lumbar spine done on September 3, 1998, showed a

disc herniation at L5-S1, with compression of the nerve root, and a bulging disc at L4-5. Claimant went to Dr. Z on September 18, 1998, and Dr. Z recommended surgery for the herniated disc and took claimant off work.

VM testified that during _____ she and other employees were moving office furniture from one room to another and that, while she could not recall the exact date in _____, she heard the books fall and went into the room claimant was in and saw the books on the floor. She said she was not in the room when the books fell and does not know whether the books struck claimant, but that claimant did not tell her on that day that she had been struck by the books. VM said that she was on vacation the week of August 31st and that when she returned on September 10, 1998, claimant called her and asked about workers' compensation and that is when she first learned that claimant was claiming that the books had struck her in _____ and that she had hurt her back. VM said that claimant told her on September 10th that the books had hit her shoulder and arm, but did not say they had hit her back.

MD, the employer's receptionist and daughter of VM, testified that around the time of Spring Break 1998, which VM said was the week ending _____, she heard the books fall while at work, that she went into the room where claimant was, that she saw the books on the floor, that claimant told her that the books had fallen, that claimant was giggling or laughing, that claimant did not indicate that she had been injured, that claimant picked up the books and went about her work, and that, prior to the time claimant stopped working on August 31st, she had not heard claimant say she had hurt her back when the books fell.

EM testified that she was not at work the day the books fell and that, when she returned to work after Spring Break, claimant told her that the books had fallen but she did not remember claimant having said that the books had struck her. She said that on August 31, 1998, claimant left a telephone message saying she would not be at work and that that evening claimant called her and told her her back was hurting and she would not be at work the next day. She said that she believes that she first learned that claimant was claiming a work injury after claimant went to Dr. Z.

Claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer's finding that claimant was moving a bookshelf on _____, when binders fell out of it is not disputed. Claimant appeals the hearing officer's findings that claimant did not tell anyone at the employer that the binders struck her until after seeing a doctor on August 31, 1998, and that claimant was not struck on the back and shoulder by the falling binders. Claimant seeks reversal of the hearing officer's decision that claimant did not suffer an injury in the course and scope of her employment on _____, and that she has not had disability, since her back condition is not the result of a compensable injury. There was much conflicting evidence in this case. As an interested witness, claimant's testimony only raised a fact issue for the hearing officer to decide. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the

evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the appealed findings and decision are supported by sufficient evidence and are not against the great weight and preponderance of the evidence. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge