APPEAL NO. 990113

On December 29, 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 whether appellant (claimant) sustained an injury in the course and scope of her employment and whether the injury extended to her chest, neck, mid back, and left shoulder. Claimant requests reversal of the hearing officer's decision that she was not injured in the course and scope of her employment on Injury 2. Respondent (carrier) requests affirmance and contends that claimant did not file an adequate request for appeal. We conclude that claimant timely filed a sufficient request for appeal.

DECISION

Affirmed.

It is undisputed that claimant was injured at work on Injury 1, while employed for the employer, (employer), when she slipped and fell to the ground. At issue is whether claimant was injured in the course and scope of her employment on Injury 2, while employed by the employer. Claimant said that she injured her wrist, hips, neck, low back, and mid back in the injury 1 injury, but did not injure her chest or left shoulder. In an October 1996 report, Dr. W noted the Injury 1, date of injury and wrote that claimant complained of pain in her low back, mid back, neck, left shoulder, right hip, and left wrist, as well as numbness in her right hand and weakness in her left leg. Claimant began treating with Dr. J, D.C., on June 6, 1997, for her injury 1 injury and between June 6 and July 14, 1997, Dr. J treated claimant 13 times for complaints of pain in her neck, upper back, and lower back and some of the progress notes for that period reflect complaints of bilateral upper extremity pain.

Claimant said that on Injury 2, she and a coworker named Ba were performing their assigned work duties counting computer boards that were in containers called totes. She said that when she and Ba were putting a tote of computer boards back up on a shelf that had rollers, the tote rolled back and hit her in the chest, bending her back and causing pain in her chest, left shoulder, neck, and back. No statement from Ba was in evidence. Claimant said that on Injury 2, and after her claimed injury on that day, she went to a previously scheduled appointment with Dr. J for treatment of her injury 1 injury and that on that day she told Dr. J about the injury that happened at work that day. Dr. J's progress note of Injury 2, notes the same complaints as she had previously noted, that is, pain in the neck, upper back, lower back, and upper extremities, but states that claimant is worse and is additionally suffering from a lumbar sprain and strain. Dr. J does not mention anything about an injury having occurred at work on Injury 2, in her progress note of that date, although she states claimant "acknowledged a lumbar sprain and strain" and that claimant reported that that "occurred on" without giving a date of occurrence.

In an Initial Medical Report (TWCC-61) dated July 23, 1997, that states a date of visit of Injury 2, and a date of injury of Injury 1, Dr. J refers to an attached report dated August 22, 1997, which states an examination date of Injury 2. In the August 22nd report, Dr. J notes that claimant complained of neck, upper back, mid back, low back, upper extremity, lower extremity, and chest pain, and that, with regard to the left upper extremity, claimant complained of, among other things, shoulder pain. Dr. J does not mention anything about an accidental injury having occurred at work on Injury 2, in her August 22nd report, but does state that claimant indicated that her symptoms began on Injury 2, and occur occasionally. Dr. J noted that claimant's job occasionally requires her to lift 20 pounds and that claimant feels that her present complaints are aggravated by her work activities. Among other things, Dr. J diagnosed the claimant as having cervical spine pain, cervical radiculitis, thoracic myofascitis, lumbar disc displacement/herniation, lumbar sprain, and rotator cuff/shoulder syndrome.

In an undated letter, Dr. J wrote that claimant's lumbar spine pain was due to the injury of Injury 1, that claimant is currently receiving treatment for a new injury which occurred on Injury 2, while claimant was lifting/pushing items at work, and that claimant is receiving treatment for injuries to her cervical and thoracic region and her left shoulder. Dr. J referred claimant to Dr. R, who wrote on October 22, 1997, that the claimant told him that on Injury 2, she was at work pushing a container of computer boards onto a shelf when the container fell and struck her chest area, causing her neck to extend and that she experienced pain in her chest, cervical spine, and left scapula area. He noted that claimant had injured her lumbar spine at work in Injury 1, that cervical x-rays done on June 23, 1997, showed narrowing of the C5-6 disc space with calcification, and that cervical x-rays done on July 23, 1997, showed no changes from the previous x-rays. Dr. R wrote that claimant sustained a new injury to her spine on Injury 2, with an aggravation of a preexisting lumbar spine condition.

The 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 found that the claimant was not injured at work on Injury 2, and he concluded that the claimant was not injured in the course and scope of her employment on Injury 2. The hearing officer states that claimant's testimony was not credible on the issues in dispute. A fact finder is not bound by the testimony of a medical witness where the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the finder 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. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No.

950084. We conclude that the hearing officer's decision is supported by sufficient evidence and is not contrary to the overwhelming weight of the evidence.

The hearing officer's decision and order are affirmed.

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Robert W. Potts
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Judy L. Stephens
Appeals Judge