

APPEAL NO. 990145

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 30, 1998, a hearing was held. He (hearing officer) determined that respondent (claimant) sustained a compensable low back injury on _____, and had disability from July 1, 1998, to December 30, 1998. Appellant (carrier) asserts that the above determinations are against the great weight and preponderance of the evidence. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He heard claimant's testimony that she worked for (employer) and while twisting and bending to reach an object under her desk on _____, she hurt her low back. A chiropractic record on July 1, 1998, noted a history of injury at work on _____, although that history gave no specifics, merely stating that there was an "industrial accident," whatever that is. Other chiropractic records indicated that claimant had "temporary total disability" throughout the period from injury to hearing; we note that workers' compensation standards have changed in the last decade. Dr. R provided a short note dated "10/21" (apparently in 1998) which says that claimant had previous treatment on the thoracic spine but no prior treatment at "lumbar 3, 4, and 5"--this note referenced no injury and no other dates in regard to treatment provided. (The hearing officer could infer that this statement refers to a period prior to _____.) Claimant also testified that she had prior neck and mid back problems for which she had sought treatment and about which she had complained prior to _____, while at work. An MRI performed September 8, 1998, showed a small disc bulge, "contacting but not compressing the thecal sac," at L4-5.

Carrier stressed the claimant's prior back treatment and her prior complaints about her back. Several other employees, including Ms. S, Ms. R, and Ms. M, testified that claimant had previously complained of "back" problems and having had back problems while on vacation the week of (the previous week before the date of injury). In addition, Ms. M testified that claimant mentioned some type of movement while in her car that morning in regard to her pain on _____; on cross-examination she said that she did not misunderstand claimant's report of movement in her car because of the discussion they had about it. However, none of the other employees could recall claimant complaining prior to _____, about her low back, whereas there was some knowledge that claimant had a prior problem with her neck and shoulders.

The question of whether an injury occurred in the course and scope of employment is a matter for the hearing officer as fact finder to determine. As stated, he heard the evidence; while various inferences could be made about the conflicting evidence, it was within the hearing officer's domain to reach the conclusions he did. He did not choose to give significant weight to the testimony of Ms. M which said that claimant mentioned an

injury in her car, not at her desk. The Appeals Panel will only overturn the hearing officer on factual questions when his decision is against the great weight and preponderance of the evidence. In this case, the decision is not against the great weight of the evidence.

With an affirmed decision that there is a compensable injury, the determination regarding disability may be considered as sufficiently supported because some weight could be given to repeated assertions in chiropractic records that claimant has "temporary total disability."

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge