

APPEAL NO. 990258

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 9, 1998. She (hearing officer) determined that the respondent (claimant) sustained a repetitive trauma occupational disease in the nature of a strain to her back/ribcage area and that she had disability for a period of time. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was a line worker at a cafeteria. Her job involved lifting numerous plates and dishes throughout the course of her workday. In the spring of 1998, she had pneumonia, including coughing and difficulty breathing. She was out of work for two weeks and then returned to work with, she said, a lifting restriction of five pounds. After a week at work, on _____, she said, her upper back and rib area became painful. She reported this to her supervisor within two days and, she believed, he attributed her pain to her pneumonia. She went to a medical center for treatment. The diagnosis was an upper back strain. She then sought care from Dr. B, D.C., who diagnosed a pulled muscle, thoracic sprain/strain, and a dislocated rib. A written statement of a coworker reflects no knowledge of an injury. Similarly, the manager, to whom the claimant said she reported the injury, stated in a written statement that he was unaware of an injury.

The claimant had the burden of proving she sustained an occupational disease. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did was a question of fact for the hearing officer to decide and could be proved by her testimony alone in this case if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The hearing officer found the claimant credible and determined in accordance with her testimony that she sustained a compensable injury. The carrier appeals this determination, arguing that the claimant was vague in her testimony and could point to no specific lifting incident as the cause of her injury. It also interprets clinic records as reflecting experience of muscle pain for one month. From this, the carrier suggests that the cause of her pain/strain was her pneumonia, not repetitive lifting at work. This evidence, we do not believe, is inconsistent as a matter of law with a finding of a repetitive trauma injury. Similarly, the lack of witnesses or the supervisor's belief that the claimant sustained no injury is not dispositive of the issue. The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company 715 S.W.2d 629, 635 (Tex.

1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence, including the testimony and statement of the claimant, but find that evidence sufficient to support the hearing officer's determination of a compensable injury.

The carrier appeals the finding of disability on the basis of no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability. For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge