

APPEAL NO. 990435

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 January 27, 1999. The issues at the CCH concerned whether the appellant, who is the claimant, sustained a compensable injury which included a prolapsed uterus, on _____, and whether she had disability as a result of her injury.

The hearing officer held that the claimant's gynecological problems, including a prolapsed uterus, did not result from her claimed injury and that she further did not have the inability to work as a result of any compensable injury for the period sought, which was July 1, 1997, through the date of the CCH.

The claimant has appealed. She argues that the overwhelming evidence supports her contention of uterine injury and disability from her injury. The respondent (carrier) responds that the decision is supported by the evidence.

DECISION

We affirm the hearing officer's decision.

At the beginning of the CCH, the attorney for the claimant made the request to "backdate" the disability issue reported from the benefit review conference to the date after the contended injury. The claimant was employed by (employer) for about one year at the time of her claimed injury. It was stipulated at the beginning of the CCH that she sustained a low back and wrist injury on _____. The carrier's attorney explained that the stipulation was made because the carrier had not timely disputed these two injuries. The articulation by the claimant of how the injury occurred was not clear. It appeared that she was charged with moving clothes on hangers along a conveyor system and contended that as she pushed a bundle of clothing, she felt pain through her back and abdomen. In a statement given to the adjuster on July 7, 1997, she said she was trying to push clothes up and away from her and felt a pop in her abdomen.

She said she completed her shift but did not report the injury because there was no one around to report to at the end of the day. The next morning, she reported her injury and was sent to the company doctor, Dr. S. Dr. S's initial report notes only "abdominal pain," prescribed medication, and returned claimant to limited duty effective July 1, 1997. Although she asserted treatment with at least two other clinics, these records were not offered. Testimony was sparse except for claimant's contention that she was examined by one clinic for pelvic problems and told there was nothing that could be done. Claimant continued to work until she began treatment on August 5, 1997, with Dr. C, a chiropractor who also treated her daughter. A lumbar CT scan ordered by Dr. C and done on October 14, 1997, was normal and unremarkable. (Likewise, a wrist MRI on February 9, 1998, was normal.) However, Dr. C's reports throughout his treatment state that claimant cannot perform gainful employment. On September 17, 1997, claimant was examined by Dr. G,

who found mild tenderness along the lumbar spine and slightly decreased range of motion. Dr. G noted that she had only minimal abdominal tenderness. Dr. G stated that claimant was not working on the date of his examination.

On January 20, 1998, Dr. L examined claimant on a gynecological consultation. He noted that she had a pelvic CT scan on October 14, 1997, which showed a normal uterus. Dr. L said that there appeared to be some fluid and a possible polyp, and recommended a hysteroscopic exam and curretment procedure for diagnostic purposes. Claimant had a dilation and curretage procedure performed by Dr. L on February 12, 1998. The report makes no mention of uterine prolapse and it appeared that exploration was being done for a possible fibroid tumor. On July 17, 1998, Dr. L noted that her uterus was slightly tilted and descended one degree. None of Dr. L's assessments link these problems to the contended injury.

On May 7, 1998, the claimant was examined by a doctor for the carrier, Dr. D. He opined that she had, at most, sustained a back and wrist strain. His examination was essentially normal. He said that she would be entitled to a five percent impairment rating "at most." Dr. D stated she could return to work with no restrictions.

A videotape taken August 20, 1998, was offered and it shows claimant moving around, stooping and bending, and driving with no distress or apparent limitation. At one point, she carries her five-year-old daughter on her hip around the outside of a building. She is also shown at her doctor's office. Dr. C's report of his visit on that date belies the observations made on videotape. He stated that she had constant pain of nine out of a 10 scale. He recommended an MRI of the lumbar spine. He stated that claimant was placed "on disability" from August 5, 1997, to an undetermined date.

A designated doctor of the same specialty as Dr. C examined the claimant on July 8, 1998, and he diagnosed lumbar disc syndrome, carpal tunnel syndrome, and uterine prolapse. However, his report stated that he performed no examination of the genitalia. The only basis for this latter diagnosis appears to be his statement that she "may have acquired" such a prolapse, based upon her statement of how the accident occurred. The designated doctor stated that he could not rule out that pelvic pain would be referred back pain, and recommended another lumbar MRI. He stated that she was not at maximum medical improvement.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The facts set out in a medical record are not proof that a work-related injury, in fact, occurred. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The hearing officer's decision on both issues is fully supported by the evidence. The medical evidence falls far short of proving that claimant even has a uterine prolapse, let alone one caused by the described events at work. Faced with the dramatic difference in claimant's appearance on videotape when compared to Dr. C's report on the same date, the hearing officer's rejection of his assessments as credible is also fully supported. Indeed, if any evidence may be characterized as "overwhelming" in its weight, it is that which is against objective indication of injury, even to the stipulated areas, beyond Dr. S's initial findings. The hearing officer could conclude that Dr. C's assessment that the claimant was unable to maintain gainful employment was based upon subjective history and symptoms supplied by the claimant, the accuracy of which the hearing officer could choose not to believe.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge