

APPEAL NO. 990467

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 17, 1999, a hearing was held. She determined that respondent (claimant) sustained a compensable injury on _____, and had disability therefrom beginning on September 11, 1998, through September 21, 1998. Appellant (employer) asserts that findings of fact that said claimant's job required repetitive movements, that said claimant sustained a course and scope injury on _____, and that said claimant was unable to work because of that injury from September 11 through September 21, 1998, are not supported by sufficient evidence, but did not argue that claimant did not perform repetitive tasks at work or that the period of disability should be for some other period of time. Employer argued that Dr. R was not credible and that claimant's sequence of events regarding her reporting of the injury was "confusing." Claimant replied that the decision is supported by the evidence.

DECISION

We affirm.

Claimant worked for (employer) on _____. She testified that she worked for this employer for 25 years. She described her duties on _____, as light duty, stating that she inspected pants by taking them from a box, unfolding them, examining them, turning them "around," then folding them back, putting a tag on them, and returning them to a box. She inspected one container a day; each container had seven or eight boxes of pants, with each box having 18 pairs of pants. She agreed on cross-examination that she felt pain in her left shoulder and neck when she lifted a box with the 18 pairs of pants in it. There was no issue of notice. The evidence showed that claimant gave notice of this injury no later than September 1, 1998.

Dr. R testified that he practices medicine in (Country) and is not licensed in the United States. He said that he has treated claimant before. A significant amount of the cross-examination of Dr. R concerned his billing practices.

Dr. R testified that he saw claimant on August 21, 1998. He said that claimant works at a job that "requires that she repeat movements." He stated that she had "cervical posttraumatic disk herniation and sprain of the infraspinatus." He said he took her off work for this injury beginning on September 11, 1998, through October 21, 1998. On cross-examination, Dr. R agreed that he believed employer was "a racist company" as was indicated in his letter of December 7, 1998. Cross-examination continued about whether Dr. R called the president of employer on a weekday or a weekend, about menial jobs, and payment for claimed injuries. When the hearing officer dismissed Dr. R at the conclusion of the testimony, he said, "I thought we were going to ask about the current injury."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She stated in her Statement of Evidence that the employer questioned the credibility of Dr. R, adding, "it is obvious that [Dr. R] harbors ill-will against [employer] and he is not licensed to practice medicine in the United States." She noted that he was "commission-approved" and stated that it was claimant's duty to "link the contended injury to an event at the workplace and establish a causal relationship" She then said that "Claimant was credible in her testimony" about her repetitive work and about feeling pain in the shoulder and neck. The hearing officer then said she based her determination of a compensable injury on both the claimant's testimony and "the medical evidence." The record contained an Initial Medical Report from Dr. R relating to the August 21, 1998, examination of claimant; both spasms on the left side of the neck and limited range of motion of the shoulder were noted. An MRI was ordered but has not been done.

As the fact finder the hearing officer determines what evidence is credible. While indicating that "medical evidence" was considered in determining a compensable injury, she did not say that she found Dr. R's testimony to be either credible or not credible. The hearing officer stated at the beginning of the hearing that the burden of proof as to both issues was on the claimant; she could still consider an observation made by claimant's lawyer, in closing, to the effect that, if employer doubted Dr. R's credibility, it could have had claimant examined by a doctor of its choosing but had not done that.

The hearing officer also noted that claimant had surgery for an unrelated problem on September 21, 1998, and chose to end disability at that time. The findings of fact are sufficiently supported by the evidence.

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:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge