

APPEAL NO. 990905

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 30, 1999, a hearing was held. She determined that respondent (claimant) injured her low back, in addition to her knees, in a fall at work on _____, and had disability from November 30, 1998, to the date of the hearing. Appellant (carrier) asserts that the hearing officer erred in finding that a back injury was compensable, stating that claimant was not credible and that evidence of her inability to work would be more persuasive if she had not changed doctors. The appeals file does not contain a reply by claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____, when she slipped and fell at work, landing on her hands and knees. The fall was witnessed. There were no stipulations but the only issue was whether the low back was injured; there was no issue as to whether one or both knees were injured compensably.

Claimant drove herself that day to a group of doctors, referred to as the "company" doctor, where she saw a physician's assistant. She then saw Dr. O, who was with the same group of doctors, on November 25, 1998. He found claimant's knees without pain or swelling; x-rays were negative. Claimant then began seeing Dr. C, D.C., on November 30, 1998. He took her off work and noted low back pain. A CT scan of the low back dated January 25, 1999, was normal, but an MRI of the low back dated February 19, 1999, reported a disc protrusion at L5-S1, mildly effacing the thecal sac.

Dr. C returned her to work without limitation on February 24, 1999, but by that time claimant was seeing Dr. L, who also took her off work. While Dr. L's records do not purport to extend the off-work period past February (the off-work slip was issued in January 1999 for four weeks until the next appointment), there is no statement from Dr. L that claimant has been returned to work. Claimant testified that Dr. L has not released her back to work. Claimant added that she has not been back to work and that her primary problem now is her low back, which, she said, had been somewhat painful from the time of the fall, but that the knees were the main problem initially. Claimant said that she went to work on November 30, 1998, but had to leave before the end of her shift because of her pain. She testified that before she left, she answered Ms. W, a supervisor, who commented, "[y]ou are still hurting, aren't you," by saying, "[y]es, I am, my knees, my legs, and my back."

Ms. W testified that claimant said nothing about any body part, except her knees, on November 30, 1998.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could believe that claimant injured her back on _____, even though she did not report that condition to medical personnel until seen by Dr. C on

November 30, 1998. Whether or not a compensable injury also injured an area of the body not reported until a later date, after medical care was in process, is a question of fact for the hearing officer to decide. See Texas Workers' Compensation Commission Appeal No. 93086, decided March 17, 1993. The records of Dr. C showing pain in the low back, the MRI, and claimant's testimony sufficiently support the determination that the compensable injury included an injury to the low back.

With a compensable injury found to have occurred and with indications that claimant was taken off work by Dr. C and Dr. L, claimant's testimony that she was not sure whether she could now work or not, coupled with her assertion that Dr. L has not returned her to work, sufficiently support the determination of disability to March 30, 1999.

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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge