

APPEAL NO. 990928

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 April 13, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether she had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and thus did not have disability. The claimant appeals, essentially asserting the evidence supports an injury in course and scope and that she has not been able to work. The respondent (carrier) urges that the determinations of the hearing officer are not against the great weight and preponderance of the evidence and that the decision should be affirmed.

DECISION

Affirmed.

The claimant claims an injury to her back and stomach from lifting a pot of potatoes on _____. This incident was not witnessed, the claimant continued working, and she did not report an injury to anyone. She also initially indicated that a kitchen supervisor was a witness but that was denied by the kitchen supervisor in a prehearing statement which was admitted into evidence. She stated she was off work the next two days (not clear if she was not scheduled or she did not come to work) and, when she showed up on the third day, she was told there was no longer any work. She did not report any injury to anyone at this time. The first she reported an injury to anyone was a couple of weeks later when she wanted to go to a doctor. This was denied and she reported an injury of _____. She was subsequently diagnosed with spinal and abdominal strain based on the history of the incident given by the claimant, and taken off work on August 31, 1998. One medical report indicates the claimant had hypertrophic degenerative changes in the lumbar spine.

The hearing officer did not find a compensable injury and, in her discussion, states that having listened to and observed the claimant, the testimony simply was not persuasive. Clearly, the pivotal factor in arriving at the findings in this case was the credibility and weight to be given the testimony, particularly given the lack of any witnesses, the lack of any reporting at the time or several days later and until after being terminated, and the delayed seeking of medical care. The hearing officer assesses the weight and credibility to be given testimony (Section 410.165(a)), and she is not bound to accept a claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Only were we to conclude from our review of the evidence, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb her decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge