

APPEAL NO. 991058

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 26, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to her cervical, thoracic, and lumbar spine on \_\_\_\_\_; whether she had disability from November 23, 1998, to the present, from an injury of \_\_\_\_\_; and whether the respondent (carrier) was relieved from liability because of the claimant's failure to give timely notice of injury. The hearing officer determined that the claimant did not sustain a compensable injury to her cervical, thoracic, and lumbar spine on \_\_\_\_\_; that she did not have disability as a result of any injury sustained on \_\_\_\_\_; and that the carrier was relieved from liability because of claimant's failure to give timely notice of injury. The claimant appeals, citing evidence she feels supports her claimed injury, disability, and notice of injury. Carrier responds that there is sufficient evidence to support the decision and asks that it be affirmed.

DECISION

Affirmed.

The claimant claims a back injury on \_\_\_\_\_, while working on an assembly line when she lifted a "heat sync," which weighed about 10 pounds, from an amplifier. She states she gave notice of her injury and went to a doctor after telling human resources that she had severe pain to the upper part of her body. In a prehearing statement, the claimant indicated she felt a sharp pain in the center of her stomach, around the "mouth of the stomach." She saw Dr. T who told her she had gastritis and returned her to work. She subsequently went to a family health center in early September and on October 19 and November 6, 1998, with a number of complaints which do not appear to relate to a work injury (cramps, sore throat, sour taste in mouth, burning during urination, keloids on her shoulder, epigastric pain, laryngitis, costochondritis, thoracic pain and chest pain). She continued working until September 30, 1998, when she was terminated because the plant was shutting down (which all employees knew from a July 1998 notice). Claimant was referred to a Dr. B who refers to complaints of chest and neck pain and notes claimant had recently discontinued diet medication from (country) which she had taken for three years. Subsequently, on November 23, 1998, after being called at home by a chiropractor, Dr. J (no further indication concerning how or why Dr. J's office contacted the claimant), the claimant was examined and treated by Dr. J. Dr. J diagnosed a cervical, thoracic, and lumbar strain/sprain. Claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated December 16, 1998, indicating the nature of her injury as "strainious [sic] lifting" and the areas affected as cervical, dorsal, and lumbar areas.

The hearing officer stated he found the claimant's testimony inconsistent and non-persuasive, determined the claimant did not sustain a compensable injury to her cervical, thoracic, and lumbar spine on \_\_\_\_\_, that she did not have disability, and that the

carrier was relieved from liability because of the claimant's failure to timely notify her employer of a work-related injury. The hearing officer could give no or little weight to the testimony of the claimant. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 6921 (Tex. Civ. App.-Amarillo 1980, no writ). Given the constellation of complaints surrounding the time frame of the claimed injury, the complaint basically of stomach pain at the time of the asserted injury, the claimant's continued working until terminated because of a plant closure, the filing of the written notice of injury in December 1998, and the conflicting matters in the various medical records to show a work-related back injury on \_\_\_\_\_, we cannot conclude that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review on issues of evidentiary sufficiency. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

\_\_\_\_\_  
Robert W. Potts  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge