

APPEAL NO. 991122

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 1999. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, did not extend to an injury to the low back and that she did not have disability as a result of her compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was working as a housekeeper at a hotel. She stated that she had cleaned a mattress and was in the process of turning it, when it flipped and caused her to fall. The claimant testified that she was able to catch herself before she fell to the ground and that she felt pain in her stomach and in her low back as she stood. She stated that she did not immediately report her injury to her employer because she was afraid she might be fired and she needed to keep her job due to monetary concerns. However, she stated that she told Ms. M, a coworker, about her injury shortly after it happened. The claimant testified that she continued to work for several days and then she told Ms. M that her pain was getting worse and insisted that she still did not want to report her injury due to her need to keep her job. She stated that thereafter Ms. M reported her injury to Ms. U, their supervisor, and that Ms. U talked to the claimant after the injury was reported and told her to go to the hospital. The claimant went to the emergency room on November 21, 1998. The emergency room records state a chief complaint of umbilical area pain and that the claimant "denies any other complaints." The claimant testified that she told the doctor at the emergency room about her back pain and he did not pay attention to her complaints. The emergency room diagnosis was a "very small" umbilical hernia. The claimant testified that the doctor at the emergency room advised her to stay off work but she told him she had to continue working, so he released her with restrictions. She stated that she continued to work until December 19, 1998, when she resigned her employment because the employer was "pressuring her" and indicating that she was working too slowly. The claimant explained that she was having difficulty performing her job duties because the employer assigned her duties that were outside of her restrictions.

On January 13, 1999, the claimant began treating with Dr. M, a chiropractor. Dr. M diagnosed lumbar subluxation and muscle spasm. In a "To Whom it May Concern" letter of March 26, 1999, Dr. M stated that the claimant's injuries resulting from the on-the-job injury were an abdominal strain and lumbar intersegmental dysfunction. Dr. M opined that the "lumbar injury is secondary to her abdominal injury due to the mechanism of injury." Dr. M explained, as follows:

[Claimant] was lifting mattresses when she felt an immediate sharp pain to her abdomen. This pain was her initial pain. It was not until the next day when she also began experiencing low back pain. The low back pain is consistent with her injury. The abdominal muscles and lumbar muscles function synergistically with each other especially in movements which involve lifting. It is very common for two injuries to co-exist with one of the symptomatic areas having a later onset. Therefore, [claimant] did sustain both injuries to her abdomen and lumbar spine.

The carrier introduced recorded statements from Ms. M and Ms. U. Ms. M stated that the claimant only told her that she had injured herself in the "belly button area." She denied that the claimant ever told her that she had injured her back. Similarly, Ms. U stated that the claimant only reported an abdominal injury and that she never complained about having injured her back.

The hearing officer determined that the claimant's compensable injury did not extend to a back injury. The claimant had the burden to prove that she sustained a compensable injury and the nature and extent of her injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer could have found injury and disability on the basis of the claimant's testimony alone. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, he was not required to accept the claimant's testimony; rather, it created a factual question for him to resolve. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence. Section 410.165(a). As such, he was free to reject the claimant's testimony that she injured her back in the incident at work on _____. In addition, he was free to consider that the emergency room records do not reflect complaints of back pain and the claimant's delay in seeking treatment for her back in resolving the issue of whether the claimant had sustained her burden of proving that her compensable injury extends to a low back injury. Finally, the hearing officer, as the fact finder, was privileged to discount the causation opinion of Dr. M that the claimant had injured her back in addition to her abdominal injury at work. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer also determined that the claimant did not have disability as a result of her compensable injury. In his decision, the hearing officer noted that the claimant continued to work after her injury until she resigned. He apparently was not persuaded by the claimant's testimony that she resigned because she was no longer able to perform her job duties due to her compensable injury. It was the hearing officer's responsibility to consider the testimony and evidence before him and to decide what facts had been established. He did so by determining that the claimant did not sustain her burden of proving that her abdominal injury caused disability. That determination is not so against the great weight of the evidence as to compel its reversal on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge