

APPEAL NO. 991129

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 22, 1999, a hearing was held. The determined that the appellant (claimant) did not sustain a compensable injury to her low back on _____, and has no disability. Claimant asserts that she was injured at work on _____, and does have disability; she also stated that the hearing officer misstated some of the evidence provided at the hearing. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) in accounting on _____, the date that, she testified, she hurt her back at L4-5 by bending forward while in her chair to reach a file in a bottom drawer of a file cabinet. She said that she felt a pop but no pain at that time, although she said she felt pain later that day. She left work early that day, but everyone left work early that day. The next morning, she testified, she could not move and went to an emergency room (ER).

Two other employees of employer testified. Ms. P, personnel director, testified that on January 6, 1999, claimant called her and told her that she had back pain, saying that on January 1, 1999, she had heard her back pop at home. Ms. T, controller for employer, also testified that during the first week in January 1999, claimant was crying at work; she said she had gotten hurt at home while bending over; she heard a pop. Ms. T said that she heard claimant was saying her injury was work related in the third week in January.

Claimant said that the last day she worked was _____; she did acknowledge that she tried to work one day during the first week in January, but had to go home. Claimant also said that she felt threatened at work and had been "under scrutiny." She did not immediately tell others at work that she hurt herself at work because she thought it would get better and she did not want to jeopardize her job. She had worked almost a year for employer.

Claimant in a statement given on January 21, 1999, said that she had had a lumbar MRI on December 5, 1998 (before the alleged injury), mentioning spasms. Claimant had gone to physical therapy for the low back on December 28, 1998, and on one other day, either the 29th or the 30th, prior to _____.

The ER record for January 1, 1999, says that claimant felt a pop in her low back "today." (Claimant said that she did not work on January 1, 1999.) Other forms from the same visit on January 1, 1999, also show the injury happened at "home" and "today."

When claimant next went to see a physician at (clinic) on January 3, 1999, the history states that she "lifted heavy box Friday" (January 1, 1999, was a Friday) "with acute onset of pain." On January 5, 1999, claimant visited a chiropractor and gave a history of injury at work on _____, while leaning into a file cabinet. Claimant stated that she told all medical personnel that she was hurt at work.

Dr. G provided a statement dated March 10, 1999, in which he said that claimant did have a new injury when seen on January 12, 1999, and that the MRIs immediately before and after _____, have a "slightly different interpretation, which may be interpretation by the radiologist, a different machine, or possibly resolution of the small original ruptured disk." A neighbor provided a statement indicating that claimant was at her house on New Year's Eve but left early because she had hurt her back.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The claimant states that the Statement of Evidence is not completely accurate concerning the assertion that she felt no pain when her back popped and that she explained that the ER on January 1, 1999, was chaotic. The hearing officer's Statement of Evidence accurately states that no pain was felt at the time of the pop, as said to have occurred by claimant. The hearing officer, in saying claimant had no explanation for the ER record history, did not mention claimant's assertion of chaos, but his appreciation of the evidence may have been that there was no adequate explanation. At any rate, the Statement of Evidence is a fair summary of the evidence, and the Statement of Evidence does not have to list all of the evidence.

The hearing officer stated that the credible evidence did not establish a work injury. As the fact finder, the hearing officer must reconcile conflicts in the evidence (see Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied); he could, and did, choose not to believe claimant's explanation for the medical histories provided of an injury at home on a different day. He could, and did, believe two other employees, who said that claimant also told them her accident happened at home. The evidence is sufficient to support the determination that claimant did not show that she sustained a compensable injury at work.

With no compensable injury, there can be no disability. See Section 401.011(16).

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:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge