

APPEAL NO. 991182

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 6, 1999, a hearing was held. He (hearing officer) determined that the respondent's (claimant) compensable injury of _____, included a thoracic sprain and a lumbar sprain, but did not include a cervical sprain or broken ribs. Disability was found from January 6, 1999, to the date of the hearing except for January 19 to 21, 1999, and January 25 to 26, 1999. The hearing officer also found that the appellant (carrier) did not waive the right to dispute compensability of the various injuries set forth. Carrier asserts that claimant sustained no back injury; that only Dr. J, D.C., reports any back injury; and that claimant did not complain of a back injury for over three months after the date of injury. In addition, carrier asserts that medical testing indicated claimant was normal and a functional capacity evaluation (FCE) showed she could do heavy work; therefore, there is no disability. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, the month, she testified, during which she fell at work injuring herself. She testified that, when she fell she fell on her left side; she injured her left shoulder, left arm, left wrist and hand, left hip, left leg, left knee, and left ankle. The only question regarding injury at this hearing was whether "the compensable injury" (unspecified as to what is included) included a cervical, thoracic, and lumbar sprain plus fractured ribs. There was no dispute that claimant fell on a day in October 1998 while at work. Her supervisor, Mr. L, testified to being told of it by a coworker of claimant. He talked to claimant, and she told him that she fell on her left leg and arm. He advised her that she could go to the doctor, but she indicated she did not want to go. She worked a few more hours but then left early. She continued to work during the remainder of October and all of November and December.

Just after Christmas, claimant reported being hugged vigorously upon returning to work after the holidays. She then, in early January 1999, went for medical care for the first time since the fall, on some date in October 1998. Mr. L said that claimant did continue to complain, while working during October 1998, about her leg, shoulder, and hip, but never mentioned her back until January 1999.

Ms. P testified that she administers benefits for the employer, and that she lives near claimant, and she and claimant ride to work together every day, including the month of October 1998. She said that claimant had told her of the fall and had complained of her shoulder. In January, claimant started complaining of pain to the rib area. (The hearing officer found that rib fractures and cervical sprain were not part of the compensable injury.)

Notwithstanding the testimony of Mr. L, claimant's supervisor, and Ms. P, the

employer's benefits administrator, claimant testified that she did not see a doctor for approximately three months because she was afraid of being fired. She said she heard of one person who was fired after having an accident. The hearing officer, through his Finding of Fact No. 3, accepted claimant's contention that she did not see a doctor for fear of being fired. With claimant's testimony to that effect, accepted by the fact finder, Finding of Fact No. 3 will not be overturned. That another hearing officer, in these circumstances, may not have weighed the evidence in this manner is not a basis for the Appeals Panel to overturn this finding of fact that claimant did not see a doctor for over three months for fear of being fired even though she told her supervisor of the injury and talked daily with the employer's benefits administrator.

Claimant first saw Dr. R, who indicated on January 5, 1999, that she complained of chest pain; he was concerned about a pulmonary embolism. (There was no note of back pain.) An x-ray was done of the chest and ribs. A bone scan indicated three nondisplaced rib fractures. Dr. R took claimant off work on January 5th, but returned her to light duty on January 18th. Claimant then chose to begin treatment with Dr. J. He noted on January 25, 1999, that she should be off work. On February 21, 1999, Dr. J diagnosed a mild acute thoracic sprain and a moderate acute lumbar sprain. He did not explain how an injury in October 1998 could result in an acute sprain in February 1999. We note that Dr. R had earlier commented on January 12, 1999, that it was "unlikely that an acute fracture which occurred in October is now in January causing her problems." (The hearing officer found that the fractured ribs were not part of the compensable injury.) Dr. J also said on February 21, 1999, that claimant is "totally precluded from regular work duties" and "extended" her "disability" through March 30, 1999. Dr. J did state that claimant should reach "maximum chiropractic improvement" in 90 days.

As stated in regard to the finding of fact that said claimant did not seek medical care for over three months because of fear of losing her job, the fact that another hearing officer may not have weighed the evidence as indicating that claimant had a lumbar and thoracic sprain, diagnosed approximately four and one-half months after the fall in question, which is part of the compensable injury, is not a basis for the Appeals Panel to overturn the decision. We observe that, while carrier's appeal says that "it is established medical fact that soft tissue injuries . . . resolve themselves in six to eight weeks . . .," carrier did not provide any medical evidence to support this statement. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He could give significant weight to Dr. J's diagnosis of lumbar and thoracic sprains in February and could discount that the injury claimant sustained which resulted in three broken ribs in late December or early January 1999 did not affect the back. By giving significant weight to the diagnosis of Dr. J, the hearing officer could also give Dr. J's comments about disability significant weight and conclude that claimant had disability, while observing that an FCE in March 1999 showed that claimant could do heavy work in an unrestricted work plane, but could only do light work in a restricted work plane.

The evidence is minimally sufficient, under the Appeals Panel's standard of review of factual matters, to affirm the determination that claimant's lumbar and thoracic sprains are part of the compensable injury of _____. With an affirmed determination of compensable lumbar and thoracic sprains, said to be in their acute phase in February 1999, the evidence is sufficient to support the determination of disability.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge