

APPEAL NO. 991248

This appeal is brought 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 May 10, 1999, with (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) was not injured in the course and scope of her employment on _____; that the appellant (carrier) received written notice of the claimed low back injury on July 29, 1998; that the carrier did not conduct an investigation until February 1999; that the carrier first contested compensability of the claimed injury in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated February 16, 1999; that the carrier did not act with reasonable diligence in not disputing the claimed injury earlier; that the carrier is liable for the claimed low back injury; that the claimant was unable to obtain and retain employment at wages equivalent to the wages she was receiving prior to _____, on (day after date of injury) and 14, 1998, and beginning January 9, 1999, and continuing through the date of the CCH because of the low back injury she claimed that she sustained on _____; and that the claimant had disability on (day after date of injury) and 14, 1998, and beginning on January 9, 1999, and continuing through the date of the CCH. The carrier appealed, contended that the evidence established that it timely contested the compensability of the claimed injury based on newly discovered evidence and that the claimant did not sustain a low back injury and cannot have a compensable injury or disability, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that it is relieved of liability. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Only a brief summary of evidence related to the appealed determinations will be repeated in this decision. The claimant testified that she sustained a work-related back injury in October 1987; that the claim was settled with a compromise settlement agreement; that she did not have back problems for about eight years until she hurt her back on _____, lifting a heavy soft-drink container while working for the employer; that she went to the (Center) the next day; that she was told that work-related injuries are handled differently and require a lot of paperwork; that she decided to say that the injury was not work related; that she went to an emergency room (ER) on (2 days after date of injury), because she was having intense pain; and that she told the doctor in the ER that she hurt her back at work. She stated that the insurance company did not contact her or question her about the injury. She said that she did not work on (day after date of injury) and (2 days after date of injury), because of the back injury; that she began working for a hospital; that she missed work during the fall of 1998 for other reasons; that she went to Dr. C, a chiropractor, in December 1998; that Dr. C placed her on light duty; that the hospital did not

have light duty, but that she continued to work in pain; that the pain was so bad that she stopped working on January 8, 1999, and has not worked since that day.

A medical report dated (day after date of injury), states that the diagnosis is sacroiliitis, that the claimant had a back injury a long time ago, that she does not remember any specific injury that caused her back problems, and that the injury was not job related. A report from the ER dated (2 days after date of injury), states the diagnosis was low back pain. Other pages of the ER report were not admitted into evidence. Records from Dr. C indicate that he first saw the claimant was on December 17, 1998; that she received treatment in the office and performed home therapy; and that she had lumbar and sacrum strain/sprain directly related to the _____, injury. In a Specific and Subsequent Medical Report (TWCC-64) dated January 28, 1999, Dr. C stated that the claimant was off work as the result of the _____, injury.

An Employer's First Report of Injury or Illness (TWCC-1) states that the injury occurred on _____; that lost time began on that day; that the injury was reported on (day after date of injury), 1998; that the claimant experienced low back pain when she lifted a bag in a box; and that she was seen at (Health Center). A TWCC-21 dated February 16, 1999, states that the carrier first received written notice of the claimed injury on July 29, 1998, and that, based on newly discovered evidence, it disputed that the claimant was injured in the course and scope of employment. The carrier contended that the medical records dated (day after date of injury) and 14, 1998, were the newly discovered evidence; that it received reports from Dr. C on January 5 and February 9, 1999; that it did not have that information earlier because in June 1998 the claimant did not state that the injury was work related and that medical records were not sent to it; and that it timely contested compensability on February 16, 1999.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The TWCC-1 states how the injury occurred and that the claimant was seen at the Providence Medical Center. The claimant testified that she was not questioned by the carrier. The hearing officer's determinations that the carrier did not conduct an investigation until February 1999, that it did not act with reasonable diligence in disputing the claim, that the carrier is not allowed to reopen the issue of compensability, and that the carrier is liable for the claimed low back injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier also contended that the holding in Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.h.) precludes the claimant from having a compensable injury. In Texas Workers' Compensation Commission Appeal No. 982742, decided January 8, 1999, the Appeals Panel held that the provisions of that case apply only when there has not been an injury. In the case before us, the claimant testified that she sustained an injury and medical records indicate that she has a low back injury. We reject the argument of the carrier that it is not liable because of the holding in Williamson.

Having found the evidence to be sufficient to support the determination that the carrier is liable for the claimant's low back injury, we also find the evidence to be sufficient to support the hearing officer's determination concerning disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge