

APPEAL NO. 991250

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 May 18, 1999. With respect to the sole issue before him, the hearing officer determined that the respondent's (claimant) compensable injury sustained on _____, extends to include an injury to the lower back. The appellant (carrier) appeals this determination on sufficiency grounds. The claimant replies that the hearing officer's decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant, 73 years old, testified that on _____, while working as a dishwasher, she tripped on a floor mat and fell, landing on her right side. The claimant testified that she was dazed after the fall, and did not remember any specific pain. According to the claimant, an accident report was completed by her supervisor, LO, her right knee was bandaged, and she returned to work. The claimant testified that she sought medical treatment with her personal physician, Dr. L, but he could not treat her because it was a workers' compensation injury. The claimant sought medical treatment with Dr. A on November 11, 1998. The claimant testified that the pain in her right arm was so severe she could not lift it, her right knee was sore, and she thought she told Dr. A, and the other doctors who treated her, that she had back pain. The claimant testified that she had a difficult time getting doctor's appointments because the injury was not confirmed as workers' compensation, so she changed treating doctors and began treating with Dr. N in January 1999.

Dr. L's notes indicate that on November 10, 1998, the claimant had complaints of right arm and shoulder pain. On November 11, 1998, Dr. A diagnosed rotator cuff syndrome and probable sprain rotator cuff, and he gave the claimant a cortisone injection. On December 12, 1998, the claimant received treatment from Dr. B, who states that "she is seen for follow-up of her back." Dr. N diagnosed the claimant with internal derangement of the right knee and chondromalacia patella right knee. Dr. N's initial medical report dated January 21, 1999, states "the patient also indicates she has severe low back pain as a result of this accident as well but has not yet been approved for treatment." Dr. N performed a lumbar MRI on April 20, 1999, which indicates the claimant has spinal stenosis L1-L4, degenerative change with posterior annular bulging at L1-4 and L5-S1, and prominent spondylotic changes throughout the lumbar spine. On May 14, 1999, Dr. N states that only the right knee and right shoulder have been accepted as compensable injuries, but based on the history received, the claimant's low back symptoms are also due to the work-related accident.

The hearing officer considered the passage of time between the claimant's injury date and her first recorded complaint of low back pain and determined that the claimant

complained of low back problems, and that she sustained a low back injury on _____. The carrier argues that the evidence falls short of establishing that the claimant's lower back problems are a result of the fall on _____. The carrier asserts that the claimant made no mention of any low back problems in her statement taken on November 19, 1998; Dr. L's and Dr. A's medical records do not indicate that the claimant had back complaints; and that Dr. B's report of December 12, 1998, is the first medical record that mentions back pain, a month after the date of injury.

The claimant had the burden to prove the extent of her compensable injury. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The claimant's testimony raised a fact issue and the hearing officer was entitled to and did believe claimant's testimony over the other evidence. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the hearing officer's determination that the claimant's compensable injury sustained on _____, extends to include an injury to the lower back.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge