

APPEAL NO. 991345

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 4, 1999, a hearing was held. He (hearing officer) determined that the appellant's (claimant) compensable groin and abdominal injury of _____, did not extend to the low back and left hip. Claimant asserts that the hearing officer's comment that claimant did not report a back injury when she first sought medical care is contradicted by the evidence and that his statement that the claimant is not credible is not supported by the evidence. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____. She had worked there over two months in a warehouse filling orders for tools by purchasers, stating that as she obtained a tool, she put it in her cart. On the date in question, claimant testified that she lifted a box of tools and felt pain in her back. She said she told her supervisor and went to an emergency room (ER) that day. She said she told all medical personnel she saw since this injury that she injured her back in addition to her abdomen, and she said she reported that the pain radiated down her leg.

Claimant's assertion that the hearing officer erred in saying she did not report her back injury at the ER was based on a quoted passage which said an x-ray showed a curvature of the lumbar spine and commented, "[c]linical correlation is recommended. The abdomen is otherwise unremarkable." The quotation highlighted in the appeal comes from an x-ray report which is labeled as a "[v]iew of the abdomen." The x-ray was noted to show gas, but no evidence of obstruction. The pelvis was said to have "round, smooth calcifications." After this comment, the report says:

There is a mild curvature of the lumbar spine with the apex directed to the patient's right and centered at L3. This may be related to patient positioning versus a mild scoliosis. Clinical correlation is recommended. The abdomen is otherwise unremarkable.

Notwithstanding that there is no evidence of any x-ray taken of the low back, the above statement is said to show that claimant reported back pain on _____, at the ER. Other ER documents show "abdominal pain," but none says "back pain." The history shows that claimant complained of "lower left quadrant pain" from "pushing carts, lifting at work; waxes & wanes x today, no blunt trauma, no prior history same, no prescriptions, no other complaint. No radiation, denies abuse." (Emphasis added.) The bottom of this document, from which the history was quoted, says "abdominal pain, etiology undetermined."

In addition to the initial ER record, claimant also went to Medical Center on December 7, 1998. The record from that visit also shows a history of pushing a heavy cart three days before "and felt pain in the left groin." Claimant then went to Medical Center No.1 on December 8, 1998, and saw Dr. S who did record a complaint of low back and left hip pain. An MRI provided on December 31, 1998, showed "some early loss of hydration" at L5-S1, "mild facet hypertrophy bilaterally at L5-S1, and mild ligamentum flava hypertrophy bilaterally at L4-5" that was "otherwise unremarkable."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While claimant said that the hearing officer's statement that claimant was not credible is not supported by the evidence, the hearing officer pointed out that she was not credible when she testified that she reported an injury to her back to the first medical care giver (the ER). While claimant also cites the x-ray of the abdomen report as indicating a report of back injury, the hearing officer could give more weight to the statement in the ER record that claimant had no other complaint and the comment in the same record that there was "no radiation." The hearing officer could note that claimant testified that she had reported pain radiating to her leg when the ER report did not just fail to mention radiation, but said "no radiation." The hearing officer did not have to accept claimant's testimony that the ER and Medical Center erred in not recording her complaints about back pain. He could also give significant weight to the absence of an x-ray of the back at the ER in determining that claimant was not credible when she said she reported a back injury to the ER.

The issue presented a fact question for the hearing officer to answer. The medical evidence, together with the supervisor's statement that claimant did not mention her back, provides sufficient evidence to support the determination that claimant did not injure her left hip and low back on _____.

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:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge