APPEAL NO. 991562

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 18, 1999. He determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these determinations, expressing her disagreement with them. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and remanded.

The claimant worked in the office of the clerk of courts. She testified that _____, was an especially busy day for her pulling folders from case files stacked in boxes on the floor. At some point during that day, she said, she bent down to retrieve a file folder and felt back pain while straightening herself up. She continued working, went home, and laid down, but could not get back up because, she said, of weakness in her right leg.

According to the claimant, she went to the emergency room (ER) in the early hours of December 29, 1998. An MRI of December 31, 1998, showed minimal lumbosacral spondylosis at L4-5 and was otherwise unremarkable. She then saw various doctors, including Dr. B, who, in an Initial Medical Report (TWCC-61) of a January 22, 1999, visit, diagnosed "transient paralysis of the limb." In the history portion of the report, Dr. B wrote that the claimant "speaks of her stress several times in her written history. She does not mention any injury to her back or limbs. She alludes to her stress on the job several times during the interview, but she does not have any specific complaints of pain." He said his initial diagnosis was nervous stress. In a neurology report of January 8, 1999, Dr. T diagnosed "subjective right leg weakness with right low back pain." He stated that the claimant gave a history of injuring herself at work on _____, but "is not able to be more specific as to how she injured herself. She reported that she was under a lot of stress and was very busy." In a report of February 26, 1999, Dr. T's diagnosis was lumbar strain with subjective right leg weakness. On April 28, 1999, Dr. T wrote a one sentence "To Whom It May Concern" letter that "[b]ased on history provided by pateint [sic], she injured her back at work on Dec 28, 1998."

The accident report the claimant signed for her employer on January 5, 1999, states: "I was under a lot of pressure and stress to get docket done for court."

The claimant had the burden of proving she sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide and could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer was not persuaded by the claimant's evidence that she injured herself at work on

_____, as claimed. In his discussion of the evidence, the hearing officer commented that the claimant's proof "[w]as confused by Claimant's assertions of stress and nerve problems to various health care providers. There is a lack of objective findings to support Claimant's assertion of injury. By her own testimony, Claimant's problems originate more from stress and overwork than any damage or harm to her body having its origination in the workplace of Employer. Claimant failed to meet her burden of proof...." (Emphasis added.) Although she admitted that she used the word stress in the accident report, she denied telling the doctors that she was under stress and does not know why this was reported, except perhaps that her use of the word nerves was not intended to convey the idea of nervous stress, but to reflect a neurological-type injury. She also said that when she went to the ER she did not know what had happened to her to cause her pain. In her appeal, the claimant relies on Dr. T's diagnosis of a lumbar strain and his assertion that the injury was sustained at work to prove her case. She also asserts that her job was not normally stressful, but only so on _____, and that "I do not feel that I testified that my injury was more stress and overwork as the hearing officer puts it."

The statement of history provided by a claimant and recorded in a medical report does not as a matter of law establish the truth of that history, but ultimately depends on the credibility of the claimant. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The 1989 Act does not require objective evidence of an injury such as the one claimed here (back strain), but a hearing officer may consider all the evidence including the lack of medical reports of an injury in arriving at a finding of fact. Texas Workers' Compensation Commission Appeal No. 92300, decided August 13, 1992;Texas Workers' Compensation Commission Appeal No. 92030, decided March 12, 1992. We do not believe that the hearing officer's comment about lack of objective findings to support an injury amounts to an impermissible demand for such objective evidence, but rather reflects his unwillingness to accept the claimant at her word that she suffered a compensable injury in light of the medical records that refer to stress and arguably go out of their way to emphasize that this is the claimant's story with limited clinical confirmation. What concerns us in this case is the hearing officer's use of the phrase "more than" in his discussion of the claimant's evidence. We have held that the activity at work need only be a producing cause of the injury. *See* Texas Workers' Compensation Commission Appeal No. 950800, decided June 30, 1995. The hearing officer's comment appears to suggest that the claimant's work activities played some, albeit minor, causative role in her injuries. To ensure the proper standard of law was applied in this case, we reverse and remand the decision of the hearing officer that the claimant did not sustain a compensable injury for further consideration and appropriate findings of whether a work incident was a producing cause of claimant's injury.

We also reverse and remand the disability determination pending resolution of the compensability issue.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge