

APPEAL NO. 991755

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 July 15, 1999. The issues at the CCH were whether the compensable injury sustained by the respondent (claimant) extends to the right arm, right shoulder, cervical spine, or thoracic spine, and whether the claimant had disability resulting from the injury sustained on _____. The hearing officer determined that the compensable injury does not extend to an injury of the claimant's right arm or thoracic spine; that the claimant's compensable injury does extend to the claimant's right shoulder and cervical spine; and that the claimant had disability from March 3, 1999, through July 15, 1999. The appellant (self-insured) appeals, urging that there is no evidence to support the hearing officer's findings and conclusions that the claimant sustained an injury to her cervical spine and that the claimant had disability or, in the alternative, that the findings and conclusions are against the great weight and preponderance of the evidence. The claimant replies that there is sufficient evidence to support the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable right trapezius injury on _____, and that the claimant did not have disability from _____, through March 2, 1999. The claimant testified that on _____, while performing her job as a baker for employer, she attempted to lift and adjust a mixing bowl to fit under the mixing machine when she felt a strong pain in the right side of her back with radiating pain into her right breast. The claimant sought medical treatment with Mr. M, a physician's assistant under the supervision of Dr. R, who treated the claimant from _____, through February 25, 1999. The claimant stated on an intake form: "My pain is in my upper right shoulder and goes directly to my neck. So most of my pain is in my back shoulder." Mr. M diagnosed the claimant's condition as a right trapezius strain, released the claimant to light-duty work, prescribed medication, and recommended physical therapy. The claimant testified that she returned to work, but her pain increased to the point that she could no longer perform light-duty work.

The claimant testified there was a language barrier with Mr. M and her medical condition became progressively worse, so she changed treating doctors and began treatment with Dr. M on March 3, 1999. The claimant gave a history of pain in her neck, right shoulder and arm, and occasional right-sided temporal region headaches. Dr. M diagnosed the claimant as having neck sprain/strain, rotator cuff sprain, rotator cuff syndrome of shoulder, disorders of bursae and tendons in shoulder region, and myalgia and myositis. On May 12, 1999, the claimant had a right shoulder MRI performed which indicated no evidence of a complete rotator cuff tear but subtle signal changes in the supraspinatus tendon, which may be due to tendinitis or perhaps a subtle partial tear. Dr. M took the claimant off work on March 3, 1999, and has not released her to return to work.

The claimant testified that her condition has improved with Dr. M's treatment and anticipates that she will be able to return to work in the near future.

On April 30, 1999, the self-insured had the claimant examined by Dr. G. Dr. G assessed back and shoulder pain which was muscular in nature, and opined that the claimant could return to modified work. The self-insured argues that there is no evidence of an injury to the cervical spine and that the claimant's injury was purely muscular; that the mere taking of the claimant off work without any objective basis--whether medical or chiropractic--cannot, in and of itself, constitute evidence of disability; and that light-duty work was available which the claimant was able to perform.

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." Section 401.011(26). 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. A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Based on the evidence presented, the hearing officer concluded that the claimant met her burden of proving she sustained a right shoulder and cervical spine injury on _____. 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 compensable injury sustained by the claimant on _____, does extend to a compensable injury of the claimant's right shoulder and cervical spine.

Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Whether disability exists is also a question of fact for the hearing officer to decide and can be established by the testimony of the claimant if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer believed the testimony of the claimant, which was supported by the medical records of Dr. M. We find there was sufficient evidence to support the determination of the hearing officer that the claimant had disability from March 3, 1999, through July 15, 1999.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge