

APPEAL NO. 991837

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 22, 1999. The sole issue at the CCH was whether the compensable injury sustained by the respondent (claimant) on _____, extends to include injuries to the claimant's cervical, thoracic and lumbar spine, right arm, and right hand. The hearing officer determined that the claimant's compensable injury includes the claimant's lumbar spine, right arm and right hand, but does not include the claimant's cervical or thoracic spine. The appellant (carrier) appeals, urging that the hearing officer's determination that the injury extends to the claimant's lumbar spine, right arm and right hand, is against the great weight of the evidence and should be vacated. The claimant replies that there is sufficient evidence in the record to support the hearing officer's findings of facts and conclusions of law, and the decision should be affirmed.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable right knee injury. The claimant testified that the injury occurred when she was working in the clothing area of employer's store, kneeling and preparing a sock rack for a display; that prior to beginning the display, she moved a clothing rack away from her immediate work area; that unbeknownst to her, someone moved the clothing rack closer to her while she was working; and that as she began to stand up, her left foot got caught in the clothing rack, causing her to lose her balance and fall. The claimant states that she hit her right side, her foot, leg, knee, shoulder, and head, and the next day her entire body hurt. The claimant called her supervisor on day after injury date, stated that she was unable to work and needed medical care, and was referred to (the clinic).

On April 22, 1998, the claimant was examined and treated by Dr. C at the clinic. Dr. C diagnosed a right knee sprain, took x-rays, and prescribed medication. Dr. C referred the claimant to Dr. S. The claimant testified that she told both Dr. C and Dr. S that her head, neck, back, right arm, right foot, right leg and right knee hurt, but cannot explain why they did not note it in their records. According to the claimant, Dr. S told her that she needed to narrow her complaints to one body part, and only focused on her right knee, but she received physical therapy to her back, legs, arms and hands. The claimant states that she was dissatisfied with her medical treatment, and selected a new treating doctor, Dr. P.

On June 19, 1998, the claimant presented to Dr. P with complaints of headaches, right-hand paresthesia, pain in the right arm and elbow, low back pain radiating to her right leg and paresthesia of the right foot. Dr. P observed decreased cervical and lumbar range of motion and muscle spasms in the claimant's cervical, thoracic and lumbar area. Dr. P diagnosed lumbar disc disorder, internal derangement, and carpal tunnel syndrome. A lumbar MRI was performed on December 29, 1998, which indicated a herniation at L3-4 and L5-S1 displacing the nerve roots, and mild bilateral facet arthrosis at L4-5 and L5-S1.

The carrier asserts that there is no causal connection between the claimant's compensable injury and her alleged lumbar spine, right arm, and right hand injury. The carrier argues that the medical records do not indicate any reference to such body parts being injured until almost 60 days after the date of injury, and that Dr. C and Dr. S took narrative, detailed descriptions of the claimant's symptoms. The carrier had the claimant examined by Dr. D on July 23, 1998. Dr. D's diagnosis was cervical strain/contusion resolved, lumbar strain/contusion resolved, right knee strain/contusion resolved, and symptom magnification.

The claimant had the burden to prove the nature and extent of her compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, it is the hearing officer's responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts have been established. The claimant's testimony raised a fact issue and the hearing officer was entitled to, and did, believe the 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). We will reverse the hearing officer's extent-of-injury determination only if it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We find there was sufficient evidence to support the hearing officer's determination that claimant's compensable injury of _____, extends to include injuries to the claimant's lumbar spine, right arm and right hand.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Elaine M. Chaney
Appeals Judge