

APPEAL NO. 991878

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 5, 1999, a contested case hearing (CCH) was held. The issue disputed at the CCH concerned the extent of the injury that was sustained by the appellant, who is the claimant, on _____. It was stipulated that she sustained a wrist injury. She contended that various other ailments and conditions were related to this injury.

The hearing officer held that the claimant had not proven the connection of her various conditions to the left wrist injury in the course and scope of her employment on _____.

The claimant appeals, arguing that her case was compromised because her attorney would not allow her to present evidence that all of her problems occurred beginning with a fall she had at work on July 7, 1995. She argues that she never claimed that various injuries to her left side occurred when she was hurt on _____. She recounts the history of her medical treatment following that injury, and argues that although she was told that her problems were "old age," they have never gone away. She included evidence she says her attorney failed to present at the CCH. She argues that all her problems "exacerbated" on _____, and she does not know what is really wrong with her. The respondent (carrier) responds that the decision is correct on the stated issue, and that claimant appears to agree in her appeal that she did not sustain many of her injuries in connection with the March 1997 injury. The carrier asserts that the additional evidence presented for the first time on appeal should not be considered.

DECISION

Affirmed.

The hearing officer has thoroughly discussed the evidence; we will only briefly summarize here. The claimant worked for a mobile home builder, (employer). Although the stipulated wrist injury is one that the hearing officer characterized as a specific injury, the testimony of the claimant, in fact, made clear that she believed the repeated application of pressure on some plumbing tongs to crimp pipes led to shooting pain that she first noticed on _____, and grew worse, with swelling in her left hand, necessitating medical treatment beginning June 17th.

The presentation of claimant's case was somewhat complicated by the further evidence that she sustained a back injury on _____, which was the subject of another claim, and she testified that her left leg, thigh, and foot injuries were in fact attributable to her back, and not to the _____ injury. On cross-examination, however, and in response to numerous questions from the hearing officer, she went on to state her deep conviction that all of her problems actually started when she slipped and fell backwards at work on July 7, 1995, for which she believed she had never been adequately treated or diagnosed.

Records from the Texas Workers' Compensation Commission indicate that claimant filed a claim for this as a back injury. She said that since that time, she had been bothered by neck, back, and various other injuries. The claimant was treated by a number of doctors, and when asked directly what was wrong with her, was unable to respond with precision except to say that to her understanding she had a nerve injury in her neck.

Claimant said that pain to her neck worsened after _____, and that her left arm pain began then. An employer's accident report that she assisted in completing on June 18, 1997, noted that she had a sore left hand for two or three months. The day before, she was seen by Dr. G, who diagnosed de Quervain's tenosynovitis. As the hearing officer noted, Dr. G's records tended to use a date of injury of June 17, 1997, although his first report recited a history of claimant noticing the pain in connection with her use of tools at work. She was also observed with degenerative changes in the joint of her thumb, and was treated with physical therapy. Claimant eventually changed treating doctors to Dr. V, whom she agreed released her back to work on August 25, 1997, although he later withdrew it, and then to Dr. B. Dr. B's reports, which consist primarily of describing treatments and complaints, also repeat the June 17, 1997, date of injury. A doctor for the carrier, Dr. E, noted that claimant had exaggerated pain responses during his February 12, 1998, examination, and that she had cervical spondylosis. This was the conclusion of a cervical MRI taken on October 6, 1997, that is referred to in other records, along with mild degenerative disease and left-sided disc bulge.

Evidence submitted for the first time on appeal cannot be considered. The _____ injury, or its extent, was not before the hearing officer as an issue. We can see that while the claimant may have been frustrated that her attorney did not delve into this more, he appeared to have appreciated that attribution of all of claimant's conditions to this injury undercut, rather than assisted, any understanding of the nature of the _____, injury. It further appeared that many of the conditions to the lower extremities that were part of the issue were in fact caused, according to the claimant, by her back injury, also not before the hearing officer. Faced with the record in this case and confusing assertions as to the cause or existence of numerous conditions aside from the wrist, the hearing officer found a dearth of evidence linking these conditions to any incident or aggravation of _____.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that that is the case here, and affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

Dorian E. Ramirez
Appeals Judge