

APPEAL NO. 991893

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 29, 1999. The issues at the CCH were whether the appellant/cross-respondent (claimant) sustained a compensable injury on _____, and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury on _____, and that the claimant had disability from _____, through May 15, 1998. The claimant appeals, urging that disability did not end on May 15, 1998, but continued through the date of the CCH. The respondent/cross-appellant (self-insured) replies that the hearing officer correctly ended disability on May 15, 1998, the date that the claimant was evaluated and determined not to have sustained any appreciable spinal injury. In its cross-appeal, the self-insured asserts that the claimant was not credible; did not sustain a compensable injury on _____; and did not have disability. In the alternative, the self-insured asserts that if a compensable injury is affirmed, the finding that the claimant had disability from _____, through May 15, 1998, should be affirmed. The claimant responds that the self-insured's appeal is untimely and should not be considered for review and that the hearing officer's decision that she sustained a compensable injury should be affirmed.

DECISION

Affirmed.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was signed for by the self-insured's _____ representative on August 13, 1999. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)), each carrier shall designate an _____ representative to act as agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's _____ representative is notice from the Commission to the carrier. Therefore, the self-insured received the decision of the hearing officer on August 13, 1999, when its _____ representative received it. Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after such receipt. The last day to timely file an appeal was August 30, 1999, since August 28, 1999, fell on a Saturday. The self-insured's appeal was sent via facsimile to the Commission and received on August 30, 1999. Additionally, the self-insured's appeal was mailed August 30, 1999, and received by the Commission on September 2, 1999. Accordingly, the self-insured's appeal is timely and will be considered.

The claimant was employed as a cosmetology instructor in the employer's vocational department for the school year 1997-1998. The claimant testified that on the morning of _____, she slipped and fell in water which had leaked from the shampoo area. The claimant stated that she hit her head, neck, and lower back when she fell. An ambulance was called and she was transported to the hospital where she was examined by Dr. S. Dr. S diagnosed the claimant with acute cervical strain with thoracic contusion and lumbar

contusion, he took the claimant off work, and he referred the claimant to Dr. T. Dr. T performed x-rays, recommended physical therapy, and prescribed pain medications. On May 15, 1998, Dr. T had a cervical MRI performed which revealed mild curvature of the cervical spine, no fracture or dislocation, and no evidence of a herniated disc or significant extradural defect. The claimant subsequently sought medical treatment with Dr. BE once on August 10, 1998, and with Dr. BY beginning June 28, 1999. Dr. BY found the claimant's neurological examination normal and, based on x-rays, diagnosed the claimant with L4-5 disc degeneration, cervical hypolordosis, and subluxation at C2-7, L3-5.

The claimant testified that she continues to suffer pain in her neck and if she lifts her arms, her hands go numb. According to the claimant, she has received sporadic medical treatment due to transportation problems and she has not been released to return to work by any doctor. The claimant said that she was hired for the 1997-1998 school year on a one year contract and she knew her contract might not be renewed if the teacher she had replaced decided to return. The claimant testified that she felt that she could work and that she wanted to be released to return to work by Dr. BY, but that she had not sought employment.

The self-insured submitted written statements from coworkers and students to support its position that the claimant staged an incident as a result of her teaching contract not being renewed on March 25, 1998. According to the self-insured, the claimant informed the adjuster that she could not make physical therapy appointments because of a lack of transportation, yet witness statements reveal that the claimant was seen driving. It was the self-insured's position that the claimant's testimony was not credible and that the claimant did not sustain an injury on _____.

The claimant had the burden to prove that she injured herself as claimed on _____. 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. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given 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 compensable 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 claimant sustained a compensable injury on _____.

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, but only that she had disability for the period from _____, through May 15, 1998. The hearing officer states that even though there is one medical report which indicates that the claimant should remain in an off-work status until she has consulted an orthopedic specialist, the fact that the claimant has not yet received continuing care from an orthopedic specialist should not permit her to extend her off-work status indefinitely. It was within the province of the hearing officer to end disability on the date that the claimant was evaluated and an MRI revealed no pathology. We find there was sufficient evidence to support the determination of the hearing officer that the claimant had disability from _____, through May 15, 1998.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge