

## APPEAL NO. 992945

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 November 5, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on \_\_\_\_\_; what was the extent of her injury; whether she had disability; whether the respondent (carrier) was relieved of liability because of the claimant's failure to give timely notice of injury to her employer; and whether the claimant made an election of remedies. The hearing officer found that the claimant sustained a compensable injury to her cervical area; that the injury did not extend to her lumbar spine; that she had disability from January 28, 1999, to the date of the CCH; that she gave timely notice; and that she did not make an election of remedies. The claimant has appealed on the issue of the extent of her injury, urging that the evidence clearly established that she also sustained injury to her low back/lumbar spine as a result of her on-the-job lifting accident on \_\_\_\_\_. The carrier responds that there is sufficient evidence to support the hearing officer's finding and conclusion that the claimant's injury did not extend to her lumbar spine and asks that the decision be affirmed.

### DECISION

Affirmed.

The claimant, a machine operator assistant, testified that on \_\_\_\_\_, while lifting a mandrel off a machine, she felt she pulled something in the neck area of her back and felt a warm sensation. She stated she did not feel it in her low back that day and since they were busy she did not think much about it until later. In any event, later that evening and the following morning she had considerable pain in her neck, she called in to say she could not come to work, and she went to an emergency room (ER). Records from the ER reflect only that the claimant's neck stiffness/pain had been going on for about one week; did not give a history of injury; diagnoses torticollis (muscle spasms), which most heal in a few days; and prescribes medication. No mention is made of any lumbar pain or problem. The claimant stated that while she was in the hospital, she told her supervisor that she related her injury to lifting at work. The claimant subsequently went back to work intermittently over the next several days. A February 18, 1999, medical record indicates that the neck pain had flared up especially at work but makes no mention of the lumbar area. A March 1, 1999, medical report refers to neck pain over three weeks (refers to an apparently unrelated chest problem) and again makes no reference to any lumbar pain or problem but recommends that the claimant be seen by an orthopedist. A March 23, 1999, medical record mentions back and neck discomfort, and a cervical and lumbar MRI on March 30th shows mild two-millimeter annular disc bulges at C3-4, C4-5; a mild two-millimeter posterior central protrusion at C5-6; and a mild to moderate-sized three-millimeter left lateral/foramina disc herniation at L5-S1.

The claimant testified that she started feeling back pain sometime in March and that her doctor subsequently indicated that the cervical pain could mask the lower back pain. A

letter from her doctor indicated that lifting can cause injury in any portion of the spine and that the "assumption of cause between the work related episode and her current complaints is based on the patient's history."

The claimant's first- and second-level supervisors testified and indicated they did not see any indication of a low back injury from observing the claimant in early February, that the claimant indicated and appeared to have a neck problem when she returned to work, and that they were not aware of the assertion of a work-related neck injury until March. They also testified at variance with the claimant's assertion that it was not unusual to be lifting heavy or loaded mandrel and stated there was a hoist for that purpose.

As indicated, the hearing officer, although finding a cervical injury, did not find the injury extended to her lumbar spine or that the lumbar condition was a result of her work. It is apparent that the hearing officer was not persuaded by the claimant's testimony regarding her claim of a lumbar injury on \_\_\_\_\_. Assessing credibility and assessing the weight to be given the evidence is a matter generally for the fact-finding hearing officer. Section 410.165(a). He was not required to accept the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Here, there was no complaint of any low back pain or problem by the claimant for well over a month after \_\_\_\_\_; according to the various medical records, there was no indication of a low back problem (only cervical) as observed by supervisors when the claimant returned to work temporarily in February; there was no report of a low back problem until later in March although the claimant was found to have given notice of a cervical injury in early February; and there was conflicting evidence regarding the lifting requirements of the particular job as causing the claimed injury. Under these circumstances, we cannot conclude that there was no evidence to support the hearing officer's determination nor can we conclude that his finding and conclusion

regarding a lumbar injury were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, we affirm the decision and order.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge