

APPEAL NO. 000141

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 29, 1999, a hearing was held. The hearing officer determined that appellant (claimant) was not compensably injured on _____, and had no disability. Claimant asserts that she was injured when she slipped and fell at work on _____, that it was a coincidence that she was terminated when she was unable to continue to work, that she had medical evidence of an injury, and that she had no preexisting lumbar injury; she adds that she does have disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant testified that she worked in the bakery of (employer) on _____, when she slipped and fell in some water standing on the floor. She said that she reported the injury that day but did not wish to have an accident report filled out. She did see Dr. A, on _____, for a prior injury and testified that she "mentioned" her fall and "soreness" in her low back; she said he treated her low back that day. According to claimant, she went to Dr. A three times a week for her prior shoulder injury and that "every time" she went to Dr. A after _____, he applied heat to her low back. She said, "my lower back has never bothered me until this incident." She has had some injections for her low back since _____, and has had an MRI of the lumbar spine.

Claimant continued to work from _____, to May 17, 1999, when she was terminated for absences (many of them for medical reasons) and tardiness (many of them apparently not explained). On May 17, 1999, she visited Dr. A, and he took her off work at that time. Claimant provided 132 pages of medical records from Dr. A, but none predated May 17, 1999, even though Dr. A said on June 10, 1999, that claimant told him on _____, that she had fallen at work, and claimant testified that Dr. A treated her low back from _____, forward. Dr. A also said, on June 23, 1999, that he saw claimant on May 17, 1999, for an injury occurring on _____, and said she had positive Kemp's, Psoas, Godlwaith, Fabere-Patrick, and toe walk. Claimant was said to be complaining of "severe low back pain" and Dr. A said her prognosis was "guarded." Dr. A's May 17, 1999, "initial examination" set forth in a three-page narrative lists the "injury/onset" as May 17, 1999.

On cross-examination claimant was asked about her low back:

- Q. Now, your testimony here today is that you never had low back pain prior to the incident that occurred in April of 1999?
- A. No sir, I haven't.

Carrier then provided the medical records of Dr. M, who, on February 4, 1998, spoke of improvement to claimant's mid and low back plus shoulder pain; he noted a "good response" to "previous trigger point injections." He specifically said that injections were provided to the lumbar paraspinous musculature. (Dr. M listed Dr. A as the "referring physician." Dr. B, treated claimant on February 11, 1998 (again at the referral of Dr. A), for low back pain in addition to mid back and shoulder pain. He noted tenderness in the low back. His "Impression" provided at the end of his report, listed "post traumatic lumbar myofascial, paraspinous" first, with thoracic second, cervical third, and de-conditioning fourth. Claimant then had an examination on December 7, 1998, by Dr. C, in which he, too, referred to cervical, thoracic, and lumbar pain. Dr. C's "Impression" was "traumatic cervical, thoracic, and lumbar myositis/strain" first, with other problems listed thereafter.

The hearing officer is the sole judge of the weight and credibility of the evidence. He commented about the lack of medical evidence, calling it "suspicious," provided by claimant prior to May 17, 1999, when she was terminated. He also commented about her denial of, but evidence showing, a prior lumbar injury. These comments are found in a thorough but incisive Statement of Evidence that also was skeptical of Dr. A's June 10, 1999, letter (stating that claimant told Dr. A on _____, of a fall at work), in the absence of medical records made at the time of the visit. He also noted claimant's problems with Waddell signs that were set forth in a report from Dr. BL and her MRI of the lumbar spine which showed a mild bulge at L4-5. He not only commented about claimant's ability to work until terminated but pointed out that if she had injured her low back on _____, her inability to work therefrom would have surfaced sooner than May 17, 1999, over one month after the alleged injury. He noted that claimant had called in as sick the day before _____, referring to back pain, which claimant testified was in regard to her upper back; the hearing officer said her credibility was "questionable." The hearing officer said that he could not conclude that the mild bulge was a result of a fall on _____. The comments by the hearing officer reflected the evidence presented and provide no basis for overturning his decision.

The evidence sufficiently supports the determination that claimant did not show that she sustained a compensable injury on _____; with no compensable injury, there can be no disability. See Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge