

APPEAL NO. 000350

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 16, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to the lumbar and cervical spine and left leg on \_\_\_\_\_, and whether the claimant had disability and, if so, for what period. She determined that the claimant sustained a compensable injury to his lumbar region on \_\_\_\_\_, but did not sustain a compensable injury to his left leg and neck. She also determined that the claimant had disability beginning on March 19, 1999, and ending on June 23, 1999, only. The claimant has appealed the determinations that he did not sustain an injury to the neck and left leg and that he only had disability from March 19, 1999, to June 23, 1999, urging that the determinations are against the great weight and preponderance of the evidence. Although the respondent (carrier) argued at the CCH that there was no compensable injury at all, on appeal it urges that the evidence is sufficient to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in this case and it will only be outlined here. The claimant claims he injured his back, neck, and leg when a wheelbarrow he was pushing got stuck on \_\_\_\_\_. No specific injury to the leg was indicated other than as related to the back. He states that he told his supervisor twice that day (denied by the supervisor who stated that the claimant indicated that his back hurt from a trip out of state) and that the next day after complaining at work about an injury was sent to a clinic. The records from the clinic where the claimant saw Dr. M only indicate complaints of lumbar pain and a diagnosis of a lumbar strain with a return to work with lifting and bending restrictions and a prescription for therapy. After visiting the clinic, the claimant saw an attorney and then went to Dr. C, who took him off work completely. His report of that day contains diagnoses of "Lumbar IVD w/o myelopathy, Lumbar Radiculitis, Myalgia, Myospasm, and Cervicalgia" although the mechanism of the injury indicates that the claimant felt a pop in his back and that his back hurt. He was referred to Dr. Ma whose report also noted only lumbar problems. A subsequent MRI showed a slight bulging at the L5-S1 level and an EMG found possible radiculopathy on the left. The claimant stated he was treated by Dr. C for his neck and that the pain "went away."

Subsequently, the claimant was seen by Dr. F, a Texas Workers' Compensation Commission-appointed required medical examination doctor, who examined the claimant on June 23, 1999. Dr. F noted the absence of any neck pain that day, that the claimant had a degenerative disc at L5-S1 with left-sided protrusion, and stated:

I do not believe this man is having significant problems from his herniated disc at L5-S1. The examination today shows that he is moving freely and easily with signs of Waddell's that are strongly suggestive of symptom magnification. It is the impression of this examiner that he is fit for full work without restrictions. There is no evidence, in my opinion, that he has suffered any cervical spine injury.

As indicated, the hearing officer found that the claimant had a compensable lumbar injury but that he did not have a cervical or leg injury. There is evidence, particularly in the initial medical report and the subsequent examination by Dr. F, that supports these determinations although there is also contrary evidence from Dr. C and an associate chiropractor that would indicate some cervical problem. This was a factual matter for the hearing officer to resolve from the conflicting evidence before her. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). We cannot conclude from our review of the evidence that the determination of the hearing officer that the claimant's injury was only to the lumbar area and not to the neck or left leg was 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). In this regard, any leg symptoms seemed to clearly be related to the back and not to a separate injury to the leg and, according to Dr. F, there was no evidence of a cervical injury. As to the period of disability, the initial return to restricted duty by the clinic, followed by the medical judgment of Dr. F on June 23rd that the claimant was fit for full duty, provided a sufficient evidentiary basis to support the determination of the hearing officer. This determination also was not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Judy L. Stephens  
Appeals Judge