

APPEAL NO. 000443

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 9, 2000. With regard to the sole issue before her, the hearing officer determined that the compensable injury sustained on _____, does extend to include an injury to the respondent's (claimant) lumbar spine. The appellant (self-insured) appeals this determination on sufficiency grounds. The claimant replies that the hearing officer's decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her right leg on _____. On _____, the claimant was employed as a substitute teacher and was assaulted by a sixth grade student. The claimant testified that she was repeatedly kicked and punched by the student. The claimant said that during the assault she was kicked in her right shin and her right leg slid, and as she started to fall, she turned to the left, twisted in an attempt to reach a desk, and felt a "crack" in her lower back and hip region. The claimant completed an accident report for the employer on _____, and filed a police report on January 14, 1998, indicating that her right leg was injured. The claimant said that she thought that her injuries would resolve, but that her right leg became increasingly swollen and infected, and she sought medical treatment at (hospital) emergency room on January 15, 1998. The claimant was placed in a physical therapy program by (hospital) for six to eight weeks.

On June 19, 1998, the claimant changed treating doctors and began treating with Dr. P. Dr. P diagnosed a "contusion distal third right leg" and "post traumatic lumbar strain." In a letter dated November 30, 1998, Dr. P states:

The patient was injured on _____ when she was kicked in the right shin/leg by a student and this caused her to lose her balance. She twisted to the left, grabbing a nearby desk, but fell hugging the desk. She felt immediate pain to her right shin and also to her lower back, hip and groin area, but when asked by her supervisor what happened, she told the supervisor she had been kicked by a student. This is apparently why the lower back was never incorporated into this case, along with the right hip and groin. I do feel that this type of injury (twisting motions on falling) are within reasonable medical probability capable of producing injury to the lower back, groin and hip.

It is undisputed that the first documented complaint of low back pain is a physical therapy record dated March 16, 1998. The claimant testified that she did not indicate that her back was injured when she completed the accident report on _____, because

she was concerned about many other things such as her leg, her class, and her job. The self-insured asserts that the claimant had many opportunities to make a complaint of a back injury, failed to do so until two months after the injury, and the claimant's back injury did not arise out of the incident on _____.

The claimant had the burden to prove the extent of her compensable injury. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). The claimant's testimony raised a fact issue and the hearing officer was entitled to and did believe claimant's testimony over the other evidence. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Regarding causal link, the trier of fact may find a causal link between the injury and employment from the claimant's testimony alone. Texas Workers' Compensation Commission Appeal No. 951246, decided September 11, 1995. 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 compensable injury sustained on _____, does extend to include an injury to the claimant's lumbar spine.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge