

## APPEAL NO. 000605

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 February 10, 2000. The hearing officer determined that the respondent (claimant) sustained compensable injuries to the low back and neck area on \_\_\_\_\_; that claimant had disability from November 10, 1998, through the date of the hearing; and that the claimed injury extends to and includes injuries for a herniated disc at the L2-3 level and herniated discs at the C5-6 and C6-7 levels. The appellant (carrier) appeals, contending that these determinations are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

### DECISION

Affirmed.

The claimant's job involved removing bags of food items from a larger carton and placing them on an assembly line. She has a lengthy history of work-related injuries and a nonwork-related mastectomy in July 1999, all of which were the subject of stipulations at the CCH, listed in the decision and order of the hearing officer, and need not be repeated here. The subject of the CCH below was claimed cervical and lumbar herniation injuries on \_\_\_\_\_. These occurred, claimant said, when she reached into the larger carton to remove a cardboard insert and felt a burning sensation in her back.

The claimant said she saw Dr. M, who had been treating her for her prior injuries, on November 18, 1997, and told him about the incident and her back pain. He prescribed a lumbar belt, advised her to discuss this new complaint with the carrier, but did not place her in an off-work status. The claimant did not see Dr. M again until December 22, 1997, because she said it took this long to obtain approval for the visit. X-rays of the cervical spine were normal, but some degeneration was seen in the lumbar spine at L2-3. Although he diagnosed lumbar and cervical herniation at this visit, Dr. M again did not issue work restrictions. He provided another report on February 13, 1998, with the same diagnosis, but no duty restrictions. According to the claimant, Dr. M twice requested an MRI, but each time the request was denied by the carrier. On November 10, 1998, Dr. M wrote that the claimant was "unable to obtain gainful employment" as a result of the numerous injuries she had, including the herniation. The claimant seeks disability from this date forward. As a result of a functional capacity evaluation on February 23, 1999, Dr. M placed the claimant in a sedentary-light physical demand category which included her prior work as a "line assembler."

On December 23, 1997, the claimant was seen by Dr. S for right carpal tunnel syndrome (CTS). Dr. S's report of this visit also reflects complaints of back pain. Similarly, the report of Dr. MR of a visit on February 2, 1999, for bilateral CTS refers to complaints of back pain. An MRI on February 5, 1999, disclosed herniation at L2-3, C5-6, and C6-7. On June 6, 1999, the Texas Workers' Compensation Commission approved the claimant's

request to change treating doctors from Dr. M to Dr. MD. Dr. MD placed the claimant in an off-work status on June 8, 1999, for her cervical and lumbar condition, which included various syndromes, radiculopathies, and other pain.

The claimant had the burden of proof on all the disputed issues. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Each presented a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. The hearing officer considered the evidence and determined that the claimant did sustain compensable lumbar and cervical spine injuries on \_\_\_\_\_, in the manner claimed. In her discussion of the evidence, the hearing officer described the claimant as credible in her description of the mechanism of the injuries and noted that the claimant's "significant medical history for other work-related injuries did not detract from her credibility." In addition, there was MRI evidence of cervical and lumbar herniation, at least as of the date of the MRI in February 1999. In its appeal, the carrier points out that Dr. M found the claimant's spine essentially normal based on x-rays and his clinical examination despite the diagnosis of herniation and that according to his records, the claimant only complained of low back pain at the initial visit for this condition. It also notes evidence that at an examination by Dr. L on November 11, 1998, the claimant had no complaints about the lumbar or cervical spine. The carrier also asserts that the claimant did not have follow-up care for her back for over a year. The claimant explained this delay largely in terms of the carrier's refusal to agree to an MRI or authorize back treatment for a large part of this time. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Clearly in this case, that evidence was subject to varying inferences and conclusions. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence deemed persuasive by the hearing officer, including her evaluation of the claimant as generally credible, as well as the medical evidence diagnosing herniation, sufficient to support her determinations that the claimant sustained compensable lumbar and cervical herniation injuries on \_\_\_\_\_.

The carrier also appeals the disability determination, contending that any inability to earn the preinjury wage after November 10, 1998, was caused by her numerous other work or nonwork-related conditions. We have observed that the compensable injury need only be a cause of the disability, not the only cause. Texas Workers' Compensation Commission Appeal No. 931117, decided January 24, 1994. Although disability may be established by the testimony of the claimant alone, in this case there was ample medical evidence placing the claimant in a limited or complete-duty release at least in part due to the lumbar and cervical spine injuries. Under our standard of review, we find the evidence sufficient to support these determinations.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Tommy W. Lueders  
Appeals Judge

Elaine M. Chaney  
Appeals Judge