APPEAL NO. 000610

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 15, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable repetitive trauma injury to her low back on _____ (all dates are 1999 unless otherwise noted); and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable repetitive trauma injury to her low back on _____ and did not have disability. The claimant appeals, contending that the hearing officer=s decision on the issues is against the great weight and preponderance of the evidence and requesting that we reverse the hearing officer=s decision and render a decision in her favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

Claimant, at the time of her alleged injury, was 15 years old and had a nine-month-old infant at home. Claimant was employed as a sacker at a grocery store (employer or self-insured) and worked a five-hour shift on weekends (Saturday and Sunday). Claimant described her duties of bagging groceries and taking them out to the customers= cars (she said about half the customers requested the groceries be taken to the car), pushing carts, etc. Claimant testified that she had been employed "one or two months" (no more accurate time frame was identified) when on _____ she "started getting back pains." Claimant said that she did not think anything of it "until it got real bad." Claimant went to a hospital emergency room (ER) on June 18th. During routine tests, it was discovered that claimant was about six months pregnant with her second child. Claimant made several more visits to the hospital between June 18th and September 24th, when she delivered her child, but these visits were apparently related to her pregnancy rather than her back condition. No diagnostic testing in the form of x-rays, MRI, etc., was performed in the June through September time frame because of claimant=s pregnancy.

In evidence is a hospital ER record dated "Thursday, June 17, 1999 - 03:58 AM," which references "back pain & injury" stating that the "back pain is most likely caused by a strain of the muscles or ligaments that support the spine." Other records dated June 18th, note complaints of back pain and in a box asking when, how and where the following were marked: "Sat" while "lifting" at "home." The impression was an acute lumbar myofascial strain. Nurses notes dated June 18th note "back pain since Saturday." Claimant was treated and released to "return to ER for eval. back pain by Dr. . . ." Claimant subsequently sought treatment with Dr. H. In an Initial Medical Report (TWCC-61) of a June 23rd visit, Dr. H notes that "[p]atients injury was contributed by packing, carrying, and lifting heavy groceries & pushing grocery carts." In an undated report, Dr. H diagnosed a lumbar strain/sprain, commented that claimant=s injury "was indeed work related . . . lifting heavy groceries and pushing carts . . . ." Regarding claimant=s pregnancy, Dr. H commented:

> The patient had a previous pregnancy during which there were no complications. She experienced no low back pain and her delivery presented no problem. Many physicians have noted that subsequent pregnancies tend to be easier than the initial pregnancy. Given this fact, there is no reason to believe that she was predisposed to a low back injury for her second pregnancy. If she was not predisposed to a low back injury for her pregnancy, then there must have been some event that occurred to give the patient the type of pain and symptomatology she presented with in this office. It is the opinion of this office that the event happened during the course of her work duties.

Dr. H took claimant off work in a series of off-work slips from July 23rd to January 28, 2000. Claimant delivered her baby on September 24th. An MRI was performed on October 29th and showed a "1 mm posterior disc bulge" at L3-4 and a "1 to 2 millimeter posterior disc bulge" at L4-5 with no other bulges or herniations.

Claimant is asserting disability from June 13th (the last day she worked) to September 24th (when she delivered) and from November 5th to November 30th when she returned to work with another employer. The self-insured contends that claimant worked only a short period of time (two five-hour shifts on weekends) and was caring for her nine-month-old infant which required constant lifting at home. The self-insured also argued that Dr. H, a chiropractor, was not qualified to render opinions on pregnancy. The hearing officer, in his Statement of the Evidence, commented:

> After considering all of the evidence I find that the claimant has not met her burden of proving that her work-related activities caused her injuries. I did not find the work-related activities as described to be repetitive, or traumatic. I find that neither the claimant=s testimony, or [sic] the medical opinions offered, establish the necessary link between the claimant=s employment and her injuries, especially given the large amount of lifting that the claimant performs at home.

Claimant on appeal asserts that the hearing officer=s findings are against the great weight and preponderance of the evidence.

The claimant in a workers= compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer

as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the liability from common knowledge to find a causal basis.

In this case, the hearing officer found that claimant had not met her burden of showing that the work-related sacking duties, as opposed to taking care of her infant at home, were the cause of her injury. The self-insured had also emphasized that claimant was alleging a repetitive trauma injury rather than a specific event injury on _____. The hearing officer found that claimant=s sacking duties were not traumatic or repetitious and "did not affect the claimant in a way not common to the general public." 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, *supra*; Pool, *supra*. Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

We also find no error in the hearing officer=s determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer=s determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O=Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge