

APPEAL NO. 000630

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 March 1, 2000. The hearing office determined that the compensable injury of _____, did not include an injury to the lumbar spine and that the appellant (claimant) did not have disability. The claimant appeals, expressing her disagreement with these determinations. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.¹

DECISION

Affirmed.

The claimant worked as a licensed vocational nurse at a nursing home. She testified that on _____, as she was helping to lift a patient from a chair to a bed, the patient's weight shifted and she, the claimant, had to strain to keep the patient from falling. She said she felt a twist and pull in her right rib cage. She reported the injury and was referred by the employer to Dr. M, whom she saw the same day. The report of this visit reflects complaints to the right side of the abdomen. The diagnosis was a right latissimus dorsi strain. At the CCH, she described that pain as from the right ribs around to the mid-back. She was placed in an off-work status for two days. She said she tried to return to work on _____, but was able to work only half a shift because her back still hurt and she had trouble breathing. She began a new job as an LVN with a new employer on July 14, 1999, and, she said, worked for five days, half of which apparently were spent at orientation. The carrier disputed the low back injury.

According to the claimant, she first experienced low back pain about _____ or _____. She saw Dr. W, D.C., on July 28, 1999, for low back pain radiating into the left leg. Meanwhile, Dr. M referred her to Dr. Z. An MRI was normal except for minimal degenerative changes. He prescribed physical therapy. On January 6, 2000, Dr. Z wrote that Dr. M's records reflected right-sided complaints, while Dr. Z believed his records were accurate that she presented to him with left-sided complaints. If the pain were on the same side, he believed it "conceivable" that the injury at work as described by the claimant caused the current complaints of pain. In a report of October 28, 1999, Dr. C, a referral doctor, described the claimant as having low back pain since the incident on _____, a fact denied by the claimant in her testimony. He diagnosed, among other things, chronic lumbar thoracic strain, sciatica, and joint dysfunction. Dr. L examined the claimant's records at the request of the carrier and concluded that the low back complaints were not related to the _____, injury primarily because the initial reported injury was to the right upper trunk

¹Matters contained in the carrier's response which could be construed as an appeal of certain evidentiary rulings of the hearing officer are not addressed because the response was not timely filed as an appeal.

region, not the lower back and left leg. She believed the initial injury of right latissimus dorsi strain appeared to resolve and the low back symptoms only arose later.

Three other witnesses testified at the CCH that they saw the claimant in different off-work situations and the claimant did not appear to be injured until she saw them observing her. The claimant denied this, saying she always had a "small limp," and generally disputed this testimony.

The claimant had the burden of proving her compensable injury of _____, included a low back injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) further provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer considered the evidence and determined that the claimant failed to meet her burden of proving a work-related low back injury. Of particular significance to him was the later onset of low back symptoms after the claimant began another job and the somewhat conflicting medical evidence as to causation. In her appeal, the claimant again stressed that the latissimus dorsal muscle is "related to" the spine as well as the rib cage and a strain in one area could clearly cause a strain in the other. She also stated that the rib pain initially masked the back pain. 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). The evidence in this case was in some conflict. The hearing officer resolved those conflicts against the claimant. Under our standard of review, we find the evidence deemed credible by the hearing officer sufficient to support his determination that the compensable injury did not include the lumbar spine.

The hearing officer also determined that the claimant did not lose more than seven days work due to the compensable injury and also did not have disability. The determination was based on evidence that the claimant was placed in an off-work status for two days by Dr. M with a return-to-work date of either _____ or _____. According to the testimony of Ms. R, the claimant's supervisor, the claimant called on July 9, 1999, to say she had another job and would no longer work for this employer. Ms R said the claimant made no mention of the injury on _____. In her appeal, the claimant asserts she has not worked since July 24, 1999, which, through the date of the CCH, was more than seven days. The claimant does not appear to assert that the initial muscle strain in the rib area played a causative role in the claimed inability to work and earn her preinjury wage. Under these circumstances, we find the evidence sufficient to support the refusal of the hearing officer to find disability in any way resulting from the accepted compensable injury.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge