

APPEAL NO. 000646

On March 8, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). Appellant (claimant) requests that the hearing officer=s decision that claimant did not sustain a compensable injury on _____, and that claimant has not had disability be reversed and that a decision be rendered in her favor. Respondent (carrier) requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

Claimant testified that she worked as a dietary technician for employer=s hospital for 13 months prior to the date of her claimed injury and that her daily work duties included, among other things, lifting seven 50- to 100-pound mats from the floor of the hospital kitchen so that she could mop and sweep the floor. Claimant testified that on _____, at about 3:00 p.m. she injured her back when she bent over and lifted the mats. Claimant reported an injury to employer on August 23rd and employer sent her to Dr. BL. There was testimony from carrier=s witnesses that the mats weighed at least 20 pounds, that it was the cook=s job to lift the mats, and that claimant was not supposed to lift the mats by herself. The cook that was on duty the afternoon of August 21st said that she did not lift the mats that afternoon, that she did not see claimant lift the mats that afternoon, that she does not know who lifted the mats that afternoon, and that claimant may have lifted the mats that afternoon. Reports in evidence reflect that claimant gave several different dates of injury. Dr. BL=s August 23rd report reflects that claimant told him that she injured her back lifting the mats at work. Dr. BL diagnosed an acute/recurrent mechanical back strain, placed claimant on light duty, and sent claimant for physical therapy. Claimant began treating with Dr. B on October 25, 1999, and Dr. B diagnosed lumbar, thoracic, and cervical strains and a herniated lumbar disc and took claimant off work. Dr. B referred claimant to Dr. F, who diagnosed a lumbosacral strain. A lumbar MRI showed no disc herniation. X-rays of claimant=s spine showed severe osteoporosis. Dr. B testified that the cause of claimant=s strains was lifting the mats at work and that claimant is unable to work due to her injury.

Claimant had the burden to prove that she was injured in the course and scope of her employment. The hearing officer states in his decision that claimant lacked credibility. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). A fact finder is not bound by the testimony of a medical witness where the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers=Compensation Commission Appeal No. 000277, decided March 27, 2000. As an appeals tribunal, the Appeals Panel is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas

Workers= Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision that claimant did not sustain a compensable injury is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge