

APPEAL NO. 000655

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 15, 2000. The sole issue at the CCH was whether the respondent (claimant) had disability resulting from the injury sustained on _____, and, if so, for what periods. The hearing officer determined that the claimant had disability beginning October 18, 1999, and continuing through the date of the hearing. The appellant (carrier) appeals, urging that the hearing officer-s decision is contrary to the great weight of the evidence and should be reversed. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant sustained a compensable back injury on _____, when she slipped and fell in the restroom. At the time of the injury, the claimant was three months pregnant. The claimant sought medical treatment with the company doctor, Dr. L, on October 13, 1999. Dr. L diagnosed a lumbosacral strain and released her to return to work in a sedentary position, sitting at least 90% of the time, with breaks as needed, and no lifting over 10 pounds. The claimant testified that she returned to work and was assigned to sit on a stool and open the door to the restroom by pushing a button. According to the claimant, she attempted to perform the job for one hour, but was unable to continue because of low back pain. The claimant testified that she was taken off work by Dr. A, her obstetrician, on October 17, 1999, because of severe back pain. The claimant said that Dr. L was not providing adequate treatment for her back pain, so she began treating with Dr. R on November 16, 1999. Dr. R took the claimant off work, and prescribed physical therapy. The claimant testified that she has not been released to return to work as of the date of the hearing.

The carrier argues that the claimant has not had disability as a result of her _____, injury. The carrier questions the credibility of Dr. R, who is not licensed to practice medicine in the United States. According to the carrier, the claimant-s injury is not severe, the claimant missed appointments with Dr. L, and the claimant was provided light duty within the restrictions of Dr. L.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The burden of proof is on the claimant to show that her disability was the result of her compensable injury. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993; Garcia v. Aetna Casualty and Surety Company, 542 S.W.2d 477 (Tex. Civ. App.-Tyler 1976, no writ). An injury suffered in the course and scope of employment does not have to be the sole cause of the inability to obtain and retain employment at wages equivalent to the preinjury wage and an employee's predisposing infirmity or condition does not preclude compensation. Baird v. Texas Employers Insurance Association, 495 S.W.2d 207 (Tex.

1973); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A claimant need only prove that the compensable injury was a cause of the inability to obtain and retain employment at the preinjury wage, not that it is the sole cause of that inability.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer found the claimant-s testimony credible that she was unable to perform the light-duty position offered by the employer, and that her inability to obtain and retain employment was caused by the fall at work. To the extent there were conflicting medical reports, this was an issue for the hearing officer to resolve. 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 determination of the hearing officer that the claimant had disability resulting from the injury sustained on _____, beginning October 18, 1999, and continuing through the date of the hearing.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge