

## APPEAL NO. 000694

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 20, 2000. The issues at the CCH were whether the compensable injury sustained on May 3, 1999, extends to include an injury to the cervical spine and coccyx; and whether the appellant (claimant) had disability resulting from the claimed injury. Prior to the hearing, the claimant notified the hearing officer that she no longer wished to pursue the disability issue. The hearing officer determined that the claimant=s compensable injury of \_\_\_\_\_, does not extend to include an injury to the cervical spine and coccyx; and that the claimant did not have disability. The claimant appeals, asserting simply that the great weight of the evidence "is contrary of the hearing officer's decision." The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant worked as a quality control inspector. She testified that her job involved moving rolls of neoprene, estimated to weigh up to 150 pounds, from a horizontal position on a pallet to a vertical position. She said that on \_\_\_\_\_, as she was moving one roll, another rolled off the pallet striking her left leg and knocking her down. She said she felt pain from her tailbone to her neck. She said she twisted when hit by the roll and could not move for about five minutes. Apparently, the carrier initiated benefits for a lumbar injury, but declined at the CCH to stipulate to any compensable injury. The claimant first sought medical care from Dr. R, on May 27, 1999. In his report of this visit, he recounted the claimant's history of the accident and diagnosed headache and cervical/thoracic/lumbar sprain/strain. The claimant changed treating doctors to Dr. A, who also related the claimant's history of the accident. His examination, including cervical and lumbar x-rays, was essentially normal. An MRI of the cervical spine on July 7, 1999, was normal, as was a lumbar MRI taken on September 23, 1999. The claimant then saw Dr. V on January 15, 2000. His diagnoses included post traumatic sprain/strain syndrome (later elevated to "severe"), coccydynia, and "Post traumatic Paravertebral myofascitis [sic]."

Also in evidence was a video surveillance tape taken in November 1999, during the time in which the claimant was claiming disability until she withdrew this as an issue at the CCH, which showed the claimant unloading concrete blocks from the back of a pick-up truck with no apparent discomfort. There was also evidence in the form of sworn statements from four employees which addressed complaints about management, including allegations of discriminatory conduct and possible workers' compensation complaints. The claimant denied being present at a meeting at another employee's house during which both types of complaints were discussed in a concerted fashion. The statements of these employees reflect that the claimant was present at the meetings and among the matters discussed were ways to stress both of these types of complaints.

The claimant had the burden of proving she sustained a compensable injury to her cervical spine and coccyx in the manner claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide and in this case could be proved by the claimant's testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. A history of a claimed injury provided by the claimant and included in a medical report is not independent evidence of the truth of the matters in the report, but depends on the credibility of the claimant who provided the information to the doctors. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The hearing officer commented that the claimant did not meet her burden of proving an injury in this case and established no more than subjective complaints of pain. Section 401.011(26) defines an injury as "damage or harm to the physical structure of the body." There was conflicting medical evidence that both the claimant's spine was normal and that there were at least soft tissue injuries. This evidence, together with questions raised about the claimant's credibility, did not persuade the hearing officer that the claimant sustained the compensable injuries claimed. 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 sufficient to support the decision of the hearing officer.

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

Alan C. Ernst  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Elaine M. Chaney  
Appeals Judge