

APPEAL NO. 000717

On February 28, 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). The hearing officer resolved the disputed issues by deciding that respondent (claimant) sustained a compensable injury to her left shoulder and lumbar spine on _____, and that claimant has had disability from August 23, 1999, through the date of the CCH. Appellant (carrier) requests that the hearing officer-s decision on all issues be reversed and that a decision on all issues be rendered in its favor. Claimant requests that the hearing officer-s decision be affirmed.

DECISION

Affirmed as reformed herein.

Claimant testified that, while working as a substitute custodian for (employer) on _____, she felt pain in her lower back, legs, and left shoulder when she lifted a 40-pound trash can to empty it into a trash bin as part of her regular work duties. Claimant went to Dr. M, on August 25, 1999, and told him she felt a pop in her back and pain in her left shoulder when she lifted a trash box on August 20th. Dr. M took claimant off work, prescribed physical therapy (PT), and referred her to Dr. D. Claimant said that Dr. M has not released her to return to work. Dr. D examined claimant and reported in October 1999 that claimant has a rotator cuff tear of the left shoulder and that a lumbar MRI done that month showed herniated discs at two levels. Dr. D prescribed lumbar injections, which claimant underwent, and noted that claimant is continuing her PT. Dr. D noted that claimant has lower lumbar pain radiating into her legs and left shoulder pain. Dr. D noted in December 1999 that claimant may need a surgical consultation if she fails to improve. Dr. D wrote that claimant is being seen predominately for lower back pain and that she also sustained a shoulder injury in her work-related accident. Claimant-s supervisor, HM, testified and claimant-s transcribed recorded statement was in evidence. There was conflicting evidence regarding how heavy the trash can may have been, what may have been in the trash can, how full the trash bins were, and what was reported to HM.

The hearing officer decided that claimant sustained a compensable injury to her left shoulder and lumbar spine on _____, and that claimant-s disability began on August 23, 1999, and had not ended as of the date of the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer-s decision 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. We reform Finding of Fact No. 10 relating to the period of disability to reflect that the date of the CCH was February 28, 2000, and not February 28, 1999, as stated in that finding, and thus disability was from August 23, 1999, through the date of the CCH, February 28, 2000.

As reformed herein, the hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge