

APPEAL NO. 000801

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 24, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury to her lumbar spine on _____; and that claimant had disability beginning December 24, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, contending that these determinations were against the great weight and preponderance of the evidence. The claimant replied that the decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant worked on an assembly line. She testified that she felt a pop in her back as she pushed a box on the morning of _____. Later that same day she was terminated for reasons related to a dispute with another employee. At the termination meeting, she did not mention her claimed injury. According to numerous recorded statements, she also did not complain to other coworkers. The claimant submitted one statement of a coworker, who allegedly helped her move the box, which reflects that she did complain of pain at the time of the claimed injury. In any case, timely reporting was not in issue. The claimant first saw Dr. R, D.C., on December 24, 1999. He diagnosed lumbar sprain/strain, sciatica, and myalgia/myositis and placed the claimant in an off-work status until February 16, 2000, when he determined she could do limited duty and anticipated a return to full duty on March 1, 2000.

The hearing officer found the claimant credible and determined that she sustained a compensable low back injury and had disability from December 24, 1999, through the date of the hearing. In its appeal of these determinations, the carrier again contends that the claimant did not report her injury on the date it occurred, continued to work the remainder of the day until terminated, and did not seek medical attention for almost a week.

The claimant had the burden of proof in this case. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The disputed issues presented questions of fact for the hearing officer to decide and each could be resolved based on the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Termination for cause does not necessarily end disability. Texas Workers' Compensation Commission Appeal No. 94239, decided April 11, 1994. The evidence was subject to varying inferences. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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 testimony of the claimant deemed credible by the hearing officer sufficient to support his findings of fact and conclusions of law.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge