APPEAL NO. 000839

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 31, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable back injury on _____; that claimant timely reported her injury; and that claimant had disability beginning on November 30, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, contending that these determinations are against the great weight and preponderance of the evidence and stressing the evidence that it believes supports its position. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, she was assigned a special project that involved picking up boxes of files. She testified that when she picked up the first box, she heard a pop in her back and felt pain. She thought numerous coworkers, supervisors, and team leaders witnessed the incident or heard her cry out in pain. She also said that on that same day she reported the injury to Ms. P, a supervisor. The claimant said she worked until November 28, 1999. On December 16, 1999, she saw Dr. B, who diagnosed cervicocranial syndrome, cervical neuralgia, and lumbar disc disorder with myeolopathy. He excused her from work effective November 29, 1999. On February 18, 2000, he changed her off-work status to light duty four hours per day and changed it back to an excuse from full-duty work until "February 29, 1999" (which we interpret to mean February 29, 2000). According to the claimant, she attempted to return to work on February 21, 2000, but was unable to work and was terminated for attendance problems on February 24, 2000. She also vaguely referenced a prior back condition for which she was off work for two or three weeks in April 1999.

In a transcribed telephone interview on December 17, 1999, the claimant did not describe a pop in her back and was still "tryin' to figure out" how she was injured." She could only "guess" it was lifting the boxes. Seven brief written statements of coworkers, team leaders, and supervisors were in evidence. Each denied knowing about this injury, being a witness to it, or being informed of it by the claimant. Ms. P specifically denied that the claimant was moving boxes on _____, or that the claimant reported any injury to her on this date.

The claimant asserted disability from November 30, 1999, through the date of the CCH.

The claimant had the burden of proof on all disputed issues. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Each presented a question of fact for the hearing officer to decide, and could be determined

based on the testimony of the claimant alone if deemed credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993; Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994. In this case, the claimant's testimony was in stark contrast to the written statements of her coworkers. Even her transcribed statement arguably was somewhat inconsistent with her testimony particularly as to what caused her injury. The hearing officer considered this evidence and found the claimant credible on all essential matters. In its appeal, the carrier quite naturally stresses the contrary evidence and suggests that this is, at most, a continuation of a preexisting injury. We observe that the evidence of a preexisting injury was vague, at best, and not supported by medical evidence. With regard to the question of timely notice of the injury, the hearing officer could believe the testimony of the claimant and reject the statement of Ms. P. Section 410.165(a) and Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. As to disability, the carrier argues not only that there was no compensable injury, but that the termination ended disability. We have held that termination does not necessarily in itself end disability, but the focus continues to be on whether, as a result of the compensable injury, the claimant was able to obtain and retain employment at her preinjury wage. Texas Workers' Compensation Commission Appeal No. 92200, decided July 2, 1992. The hearing officer found from the evidence that regardless of the fact of termination, the claimant was still unable, because of her compensable injury, to earn her preinjury wage.

While another hearing officer may well have found otherwise in this case, 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 decline to substitute our opinion of the credibility of the evidence for that of the hearing officer. Rather, we find the testimony of the claimant on all the disputed issues, 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:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge