

APPEAL NO. 000863

On March 29, 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 on _____; that claimant has had disability from December 21, 1999, through the date of the CCH; and that appellant (carrier) did not waive its right to contest compensability of the claimed injury. Carrier requests that the hearing officer's decision on the issues of compensable injury and disability be reversed and that a decision be rendered in its favor on those issues. Claimant requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision in favor of carrier on the waiver issue.

DECISION

Affirmed.

Claimant began working at employer's store in August 1998, and her work duties included, among other things, cooking. Claimant testified that on _____, she used her left hand to pull a commercial-sized tray or pan of sausages out of an oven at work while she held an empty pan in her right hand and then carried the tray of sausages with her left hand with her thumb on top and her fingers on the bottom of the tray protected by a towel when she felt a sharp pain in the area of her left elbow and forearm. She said that she continued to work her regular job duties but that her left elbow and forearm got worse and she became unable to grip things with her left hand. Claimant began treating with Dr. D, D.C., on November 15, 1999, and Dr. D wrote that claimant injured her left elbow, forearm, and wrist at work on _____. Dr. D prescribed physical therapy for claimant's left upper extremity and restricted claimant to light-duty work. Claimant has continued to be treated by Dr. D. Claimant said that employer provided her with light-duty work and that she worked until December 21st, when, she said, Dr. D took her completely off work because her left arm had gotten worse. Dr. D issued several off-work slips, one of which is dated December 21, 1999. A subsequent off-work slip is dated January 4, 2000. Claimant said that from October 1994 to October 1995 she had a business in which she sewed beads by hand. RB, claimant's supervisor, testified that a pan of sausages weighs less than five pounds; that claimant was upset about shift changes; that on November 12, 1999, claimant told him that she was not sure if she was injured at home or at work, but that she had felt pain at work when she pulled a pan of biscuits or sausages out of the oven; and that claimant did not exhibit any sign of injury while working. Dr. S testified that she reviewed medical records at carrier's request and in her opinion it did not appear that claimant had an injury that could cause the symptoms claimant is complaining about and that she does not believe that claimant's complaints are work related. Dr. S said that bead sewing could cause claimant's symptoms.

Injury, compensable injury, and disability are defined in Sections 401.011(26), (10), and (16), respectively. Claimant had the burden to prove that she was injured in the course and scope of her employment and that she had disability. The hearing officer decided that claimant sustained a compensable injury on _____, and that claimant had disability as a result of the compensable injury sustained on _____, beginning on December 21, 1999, and continuing through the date of the CCH. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge