

APPEAL NO. 001074

On April 21, 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.* The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain an injury in the course and scope of her employment, that the claimant timely notified the respondent (self-insured) of her claimed injury, that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election of remedies, and that the claimant has not had disability. The claimant requests that the hearing officer's decision on the issues of compensable injury and disability be reversed and that a decision on those issues be rendered in her favor. The claimant contends that she was injured at work on _____, and that she has had disability. No response was received from the self-insured.

DECISION

Affirmed.

The claimant is a correctional officer for the self-insured. She testified that about five years ago she had right leg pain and had back surgery. A medical report states that the claimant had an L4-5 discectomy on the right side in 1995. The claimant said that she did not have back pain after her surgery. Dr. H medical records reflect that the claimant complained of low back, right hip, and right leg pain in August 1997; that she complained of pain in the left side of her back and left hip in October 1997; and that she complained of pain in the left side of her back in December 1998.

The claimant said that on _____, she was assigned to operate a video camera during cell searches and that she carried the heavy video camera on her right shoulder and a spare video camera battery that weighed more than one pound in her left back (hip) pocket. The claimant said that when she turned and twisted while operating the video camera, she felt a sharp pain in her left buttock where the battery was in her left back pocket and the pain went down her left leg. The claimant's coworker wrote that on _____, after the claimant had operated the video camera, the claimant told him that she had hurt her left hip operating the camera while carrying the extra battery in her hip pocket and that the claimant appeared to be in pain. The claimant's mother stated in a written statement that the claimant told her on November 8, 1999, that she had pain in her left buttock and left leg on November 7th when she was at work carrying the video camera with the extra battery in her back pocket.

The claimant went to Dr. P on December 21, 1999, and he noted the claimant's complaint of a pulled muscle in her left buttock with pain radiating down her left leg. An EMG done on February 1, 2000, revealed left L5 radiculopathy. Dr. P took the claimant off work in February 2000. Dr. P wrote in March 2000 that the claimant has had pain in her lower back and down her left leg after carrying a heavy video camera and battery. In response to written questions, Dr. P noted that the L4-5 disc disruption on the left may be

related to the claimant's carrying of the video camera on her right shoulder with the battery in her left hip pocket on November 7th.

Dr. P referred the claimant to Dr. M, a neurosurgeon, who reported on February 10, 2000, that on _____, the claimant had noticed left leg pain while packing around a heavy video camera and battery at work; that the claimant had had a prior surgery at L4-5 on the right which resolved her right-sided pain; that she had never had any left-sided pain until _____; and that a lumbar MRI done on February 10, 2000, showed disruption of the disc at L4-5 on the left with protrusion of a fragment and compression of the L5 nerve root. Dr. M wrote that he believes that the L4-5 disruption on the left is a work-related injury and that that is not related to the claimant's prior disc surgery on the right side. Dr. M wrote in April 2000 that the claimant would be scheduled for surgery as soon as it could be arranged. In response to written questions, Dr. M noted that he feels that the claimant's injury was caused by the work activity of carrying the video camera on the right shoulder with the battery in the left hip pocket and noted that the mechanism of the injury would have been lifting and swinging a heavy camera and battery pack from the floor.

The claimant had the burden to prove that she was injured in the course and scope of her employment and that she has had disability. The hearing officer found that the claimant did not sustain damage or harm to the physical structure of her body on _____, during the course and scope of her employment and she concluded that the claimant did not sustain an injury in the course and scope of her employment and that, because the claimant did not have a compensable injury, she has not had disability. Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Whether the claimant sustained an injury in the course and scope of her employment was a fact question for the hearing officer to determine from the evidence presented. The hearing officer noted, among other things, that the description of the mechanism of injury stated by Dr. M in response to written questions was different from the mechanism of injury described by the claimant. The hearing officer is 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 and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. 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

Tommy W. Lueders
Appeals Judge