

APPEAL NO. 001101

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of employment on _____, and that the claimant did not have disability. The claimant appeals the adverse determinations on sufficiency grounds. The respondent (self-insured) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked for the employer as a bus driver and was five months pregnant on _____. The claimant testified that on _____, she injured her back while driving a bus which had a stiff accelerator and a seat that would not adjust properly. The claimant completed a bus defect card on _____, stating that there was a problem with the accelerator and that the air pressure would not release enough for her to reach the pedal. The claimant testified that she sought emergency medical treatment that night because of back pain and was told that she had a back sprain. The claimant subsequently sought medical treatment with Dr. P and was taken off work. After the birth of the claimant's baby, a lumbar MRI was performed which showed multilevel mild bulges. Dr. P opines that based on reasonable medical probability, the mechanism of injury as described by the claimant caused internal disc defragment of the lumbar spine and, likely, facet joint irritation, facet syndrome, and sacroiliitis. On March 15, 2000, the claimant returned to light-duty work based on a release by Dr. P.

The claimant had filed a prior claim for a work-related back injury in July 1999. The claimant testified that she sought medical treatment, was told that her back pain was related to her pregnancy, and was not taken off work. In a recorded statement taken on August 19, 1999, the claimant stated that the back pain from the July 1999 injury had not resolved and that she was still taking Tylenol. Ms. B, the workers' compensation claims adjuster, testified that the claimant's July 1999 claim was denied because the claimant complained of discomfort sitting in the bus seat; that the claimant's complaints regarding the _____, injury were identical to that of the July 1999 claimed injury, except for the complaint of a hard accelerator; and that no defect was found in the accelerator or the seat.

The claimant had the burden to prove that she injured herself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He did not find the claimant's testimony, nor Dr. P's opinion, persuasive concerning the mechanism of injury. The hearing officer concluded that claimant did not sustain an injury while performing her job

duties on _____. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain an injury in the course and scope of employment on _____.

The claimant appealed the hearing officer's finding of no disability. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge