APPEAL NO. 001264

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 May 2, 2000. The hearing officer determined that the appellant (claimant) did not suffer an injury in the course and scope of her employment on _____, in the form of an occupational disease, and did not have disability. The claimant appeals, urging that the great weight of the evidence is to the contrary of the hearing officer's decision. The respondent (carrier) 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 lab technician for seven years and her job duties included drawing blood from approximately 30 to 50 patients per day. The claimant, who is 4'10", testified that she would have to stand and bend down to draw blood from a sitting patient sitting in a chair in which the chair arms adjusted only to her waist level. The claimant said that the week before _____, her back was sore from bending over, and she requested a patient chair that was adjustable in height. The claimant testified that on _____, when she was drawing blood from a patient, she had a cramp in her back, and could not straighten up. According to the claimant, she sustained a repetitive trauma injury as a result of bending over to draw blood.

The claimant sought medical treatment with Dr. A on February 18, 2000. Dr. A's medical records state that the claimant gave a history of an injury to her low back when she was bending over a patient to draw blood and felt a pull and pain within her back. Dr. A diagnosed the claimant with a lumbar strain, and took the claimant off work. On April 13, 2000, Dr. A released the claimant to return to work with restrictions. The claimant testified that the employer did not provide her with restricted work, and she has had disability from February 15, 2000, through the date of the hearing.

The carrier presented a videotape of the claimant's work environment and argued that there were alternatives to standing and stooping over to reach patients. Ms. MP, the director of the laboratory, testified that although the practice was to stand and draw blood, a chair was available for the claimant to sit on. Ms. SP, the workers' compensation manager for the employer, testified that an occupational therapist had recommended that employees sit to perform their job duties.

The claimant had the burden to prove that she sustained a repetitive trauma injury to her back. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence.

The hearing officer found that the claimant's job involved repetitive bending to take blood from patients; that the claimant's doctor has not related the back problem to repetitive trauma at work; that the claimant did not offer expert evidence relating her back condition to her job duties; and that the claimant did not prove by a preponderance of the evidence that her back problems are the result of repetitive trauma in her employment. While expert evidence was not required to prove a causal connection between the claimant's injury and her employment, the hearing officer could consider medical evidence along with a claimant's description of work duties in determining whether causation was proved. The hearing officer considered all of the evidence and did not find the claimant's testimony persuasive. 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 suffer an injury in the course and scope of her employment on _____, in the form of an occupational disease, repetitive trauma injury to her back.

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:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge