

APPEAL NO. 001275

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 8, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable back injury on _____, and that the claimant had disability from February 3, 1999, through March 1, 1999. The appellant (carrier) appealed, contending that in this case the claimant was required to prove a compensable injury with expert medical evidence and that the determination is, in any case, against the great weight and preponderance of the evidence. The claimant replied that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a landscape irrigator. He testified that on _____, he lifted a tailgate on a truck and felt low back pain. He said he reported the injury immediately and continued working that day and through January 1999 under pressure from his employer to complete the job they were on. He also testified that he was an avid skydiver and did this regularly, the last time on Sunday, January 31, 1999. He first saw Dr. W on February 3, 1999. An MRI eventually identified herniation at L4-5. Dr. W later reported that he found the claimant credible and did not believe that the injury was caused by skydiving. Dr. T, a referral doctor, reported that the activities of _____, as described by the claimant "are quite capable of causing this type of injury." He also stated that a "contribution from jolting at the end of skydives cannot be excluded. That however does not exclude primary causation or aggravation caused by his injury of _____."

The hearing officer found the claimant credible and determined that he sustained a lumbar spine injury as claimed. The carrier did not raise a sole cause defense on which it would have had the burden of proof. Instead, it argued both at the hearing and again on appeal that the claimant, who worked some six weeks after the alleged incident, needed expert medical evidence in this case to determine whether the incident in December 1998 or later skydiving, particularly the event immediately preceding the visit with Dr. W, caused a back injury. We cannot agree that expert medical evidence is required in this case. Rather, this case, we believe, turns on the credibility of the claimant in his assertions of immediate pain after lifting the tailgate, of being pressured to continue working even though he was in pain, and of the completion of the job at the end of January 1999.

The cause of the injury in this case presented a question of fact for the hearing officer to decide. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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 find the testimony of the claimant, deemed credible and persuasive by the hearing officer sufficient to support the compensability determination in this case.

The carrier appeals the disability determination only to the extent that it contends there was no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge