

## APPEAL NO. 001312

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 15, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_. The appellant (carrier) appeals this determination on sufficiency grounds. The claimant replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

### DECISION

Affirmed.

The hearing officer's decision sets forth fairly and adequately the evidence in this case and it will only be outlined briefly here. The claimant testified that she was employed by the Girl Scouts of America as a product sales director and participated in loading and moving equipment and supplies with other staff and volunteers to prepare for a leader training session. On \_\_\_\_\_, the equipment and supplies were loaded into cars and transported to the training site and on \_\_\_\_\_, were removed from the training site and returned back to the Girl Scout offices and the camp.

The claimant testified that on \_\_\_\_\_, she noticed tightness in her low back, which ultimately progressed to severe lower back pain with pain radiating into her left leg. The claimant sought medical treatment with Dr. Sa on October 22, 1999, and was examined by his nurse, who diagnosed a lower back strain. The claimant returned for additional medical treatment on October 29, 1999, and was examined by Dr. B, who ordered an MRI. Dr. J, who interpreted the MRI performed on November 3, 1999, indicated that the claimant had a herniated disc at L4-5. Upon receipt of the MRI results, Dr. Sa met with the claimant and referred her to Dr. S for an orthopedic examination. The disc herniation was confirmed by Dr. S, who recommended a laminectomy and discectomy. The claimant declined surgery and underwent conservative therapy including epidural steroid injections.

The carrier offered statements from several individuals who were questioned about the circumstances surrounding the claimant's activities on \_\_\_\_\_ and \_\_\_\_\_, as evidence that the claimant's back pain was not caused by her work on these two days but was merely the recurrence of symptoms of a back injury sustained in two earlier motor vehicle accidents (MVA). The claimant admitted her involvement in the MVAs, but denied having sustained any back injury in the accidents. The claimant also offered statements from coworkers who noted the claimant having some back problems after \_\_\_\_\_.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole

judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex.1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained a compensable injury on \_\_\_\_\_.

We affirm the hearing officer's decision and order.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge