APPEAL NO. 001338

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 12, 2000. The hearing officer determined that the respondent's (claimant) compensable injury extends to and includes bilateral carpal tunnel syndrome (BCTS) and a back injury and that the claimant had disability from March 19 through June 25, 1999. The appellant (carrier) appeals, contending that these determinations are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant. The finding of no disability after June 25, 1999, has not been appealed and has become final.

DECISION

Affirmed.

The claimant worked as a secretary. She slipped and fell in the employer's parking lot on _____. The carrier has apparently accepted knee and hand scrapes and bruises as the extent of the compensable injury. The claimant testified that she used her hands to break her fall and that over the succeeding days, she experienced tingling in each hand and low back pain. She first saw Dr. G, on December 30, 1999. Dr. G's report of this visit reflected complaints of wrist and hand pain and overstretching of the low back. She continued treating with Dr. G until March 15, 1999, when she changed to Dr. D. In a letter of January 3, 2000, Dr. D wrote that the claimant sustained low back and bilateral hand injuries and that the "mechanism" of injury was the fall. Later diagnostic testing disclosed lumbar bulging and was consistent with BCTS.

The carrier relied on the reports of two peer review doctors who, based on a records review, concluded that the claimant's low back condition was preexisting and degenerative in nature and that the fall did not create severe enough trauma to cause even the mild BCTS reflected in the test reports.

The claimant had the burden of proving she sustained BCTS and a low back injury in her fall on December 18, 1999. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer considered this evidence and found the claimant and her doctors more credible and persuasive on the compensability issue than the carrier's evidence. 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 and the opinions of Dr. G and Dr. D, deemed credible by the hearing officer, sufficient to support her conclusion that the compensable injury includes the low back and BCTS.

On the disability issue, the claimant testified that she continued working after the injury.[1] She said that toward the end of February and beginning of March 1999, she was involved in a special project that required more than usual lifting, unpacking, and filing. According to the claimant, her hands became more painful and at a visit with Dr. G on March 12, 1999, he placed her in an off-work status.[2] The claimant has been continued in an off-work status at least through 1999. She further testified that she enrolled in a trade school in late June. The hearing officer found this activity of the claimant in going to school inconsistent with disability despite the continuing work excuses of Dr. D. For this reason, the hearing officer found disability only from March 19 through June 25, 1999. The claimant has not appealed the termination of disability on this date. The carrier argues that the claimant had no disability at all and downplays any increase in physical activity in late February and March 1999 that may have caused disability. Clearly, the evidence as to disability was subject to varying inferences. This, too, was a question of fact for the hearing officer to decide. Under our standard of review of factual determinations, we find the evidence sufficient and affirm the disability determination.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge

[1]She normally worked five hours per day.

[2]The discrepancy in this date and the hearing officer's finding that disability began on March 19, 1999, has not been appealed.