APPEAL NO. 001897

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 11, 2000. At the request of the appellant (claimant) and the respondent (carrier), the disputed issues concerning two claimed repetitive trauma injuries, one related to the low back and another related to carpal tunnel syndrome (CTS), were litigated at one CCH. Concerning the CTS injury, the hearing officer determined that the date of injury is _____, and that the claimant sustained bilateral CTS in the course and scope of her employment. Those determinations have not been appealed and have become final under the provisions of Section 410.169.

Concerning the claimed low back injury, the hearing officer determined that the date of the claimed injury is _____; that the claimant timely filed a claim with the Texas Workers' Compensation Commission; and that she did not sustain an injury in the form of an occupational disease in the course and scope of her employment. The claimant appealed, urged that the evidence is sufficient to show that she did sustain an injury in the course and scope of her employment, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a low back injury in the course and scope of her employment. The claimant also stated that the finding of fact and conclusion of law concerning the date of the claimed injury is correct, but that the decision of the hearing officer contains a clerical error concerning the date of the claimed injury. The carrier responded, urged that the evidence is sufficient to support the appealed determination of the hearing officer, and requested that her decision related to the low back injury be affirmed.

DECISION

We reform the decision to correct a clerical error and affirm the decision, as reformed, and the order.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence related to the claimed low back injury will be included in this decision. The claimant began working for the employer in September 1997. She performed general cleaning that included sweeping, mopping, wiping tables and walls, removing items from shelves, wiping shelves, rotating stock on shelves, cleaning restrooms and equipment, washing windows, and emptying trash cans. She testified that her job required that she lift, push, pull, and twist. On _____, the claimant tripped and fell at work, injuring her knee, foot, elbows, and jaw. She contended that she also injured her lower back. After a CCH held on February 11, 2000, another hearing officer determined that the compensable injury sustained on _____, does not include an injury to the claimant's lower back. The record does not indicate that the decision of that hearing officer was appealed.

The claimant testified that after she fell in _____, she had pain on the right side. She said that after the pain got out of her foot and knee, she still had pain in her lower back; that the pain in her back started as a dull pain; that every once in a while she had sharp pain in her back; that her leg started going out from under her; that she now has back pain all of the time; that her leg goes out from under her more than it did before; and that she cannot be comfortable in any position. The claimant stated that Dr. C requested an MRI, that the carrier denied the MRI, and that Dr. C told her that her work aggravated her back condition.

The ombudsman assisting the claimant wrote a letter dated May 11, 2000, to Dr. C, asking him four questions. Dr. C responded, stating that his diagnosis was mechanical low back pain; that, according to the claimant, the diagnosis was not preexisting; that the claimant related the onset of pain to her fall at work; and that it is likely that activities involving flexion and torsion of the back may aggravate symptoms. In a letter dated June 19, 2000, Dr. C wrote:

> [Claimant] has asked me to write a letter to clarify the relationship of her low back to her work and to her previous work-related injury which occurred on 2-11-99.
>
> The patient (from this fall) sustained a lumbar sprain. The patient was complaining of no back pain prior to this. After the accident, she began complaining of pain in the right buttock radiating down the leg consistent with a lumbar strain or sprain.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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 aggravation of a nonwork-related condition may result in a compensable injury and the injury does not have to be the sole cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 92242, decided July 24, 1992. At the CCH, the claimant cited several Appeals Panel decisions concerning aggravation of preexisting conditions and contended that repetitive trauma at work aggravated her low back condition. There is nothing in the record to indicate that the hearing officer did not consider those Appeals Panel decisions or that she did not properly apply the law to the evidence. The hearing officer did not find the claimant's evidence to be persuasive on the issue of whether she sustained an injury to her

back in the course and scope of her employment. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant did not injure her low back in the course and scope of her employment is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the appealed determination of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision of the hearing officer does contain a clerical error concerning the date of injury. We reform the decision to state that the date of injury is _____.

We affirm the decision, as reformed, and the order related to the claimed lower back injury.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge