

APPEAL NO. 001920

On July 19, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that on _____, the respondent (claimant) sustained a compensable back injury in the course and scope of her employment with the employer and that the claimant has had disability as a result of her compensable injury from _____, through the date of the CCH. The appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, she had been working for the employer as a cook for three years; that on _____, she was working the graveyard shift from 11:00 p.m. _____, to 6:00 a.m. _____; that about 20 minutes after 12:00 a.m. on _____, she bent over to pull open a freezer drawer to take out food to fill an order; that the freezer drawer was stuck; that when she yanked on the freezer drawer to open it, she felt pain in her lower back; that she injured her lower back when she yanked on the freezer door; that a coworker, RB, witnessed her injury; that she continued to work until her shift was over; and that the evening of _____, she called work and told the assistant manager, RC, that she had hurt her back.

The claimant further testified that she worked from 11:00 p.m. _____, to 6:00 a.m. _____, preparing the employer's kitchen for the bug exterminator; that she had back pain when she went home on _____; that she called work on September 13, 1999, and told MM, the manager, that she had been injured pulling and picking up in the kitchen; that she went to Dr. G on _____; that she has continued to treat with Dr. G; that Dr. G told her that she has a lumbar strain; and that Dr. G took her off work and has kept her off work.

RB stated in a recorded statement that he did not witness the claimant sustain an injury at work on _____, and that the claimant did not tell him that she was injured at work. RC stated in a recorded statement that claimant did not tell him that she was injured at work. MM stated in a recorded statement that on _____, the claimant told her that she had hurt herself in the kitchen and that she had pulled a muscle cleaning the kitchen.

Dr. G's report of _____, reflects that the claimant told him that she was injured at work on _____, and that she was complaining of back pain radiating down her legs. Dr. G diagnosed a possible lumbar radiculopathy and wrote that the claimant was to remain off work. Dr. G has issued several work status reports indicating that the

claimant is to remain off work. An MRI of the claimant's lumbar spine done in February 2000 was reported to be unremarkable. Dr. G noted that the claimant was seen by Dr. C in February 2000 and that Dr. C had recommended lumbar epidural steroid injections for the claimant's lumbar pain. Dr. G has also noted that the claimant has significant tenderness in her lumbar spine and paravertebral muscle spasms. In June 2000, Dr. G diagnosed the claimant as having lumbar discogenic back pain.

The carrier appeals the hearing officer's findings that the claimant sustained harm to her back on _____, while engaged in an activity that originated in and had to do with the employer's business and that was performed by the claimant in furtherance of the business or affairs of the employer, and that the claimant has been unable to obtain and retain employment at wages equivalent to her preinjury wage from _____, through the date of the CCH. The carrier also appeals the hearing officer's conclusions that on _____, the claimant sustained a compensable back injury while in the course and scope of her employment with the employer and that the claimant has had disability as a result of her compensable injury from _____, through the date of the CCH. The carrier contends that there is insufficient evidence to support the hearing officer's determinations of injury and disability. The claimant had the burden to prove that she sustained an injury in the course and scope of her employment and that she has had disability. In workers' compensation cases, the issues of injury and disability may generally be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence, and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995.

It is clear from the hearing officer's Statement of the Evidence portion of her decision that she found the claimant's testimony credible, and that the hearing officer determined that the evidence established that the claimant's back injury occurred on _____, when the claimant forcefully pulled on the freezer drawer at work. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge