APPEAL NO. 001941

This appeal arises 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 5, 2000. With regard to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable left leg/knee injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from March 12 through July 5 "but not beyond July 5, 2000."

The appellant (carrier) appeals, contending that the claimant did not sustain any injury or have any disability and very specifically arguing that if we affirm the hearing officer's decision that the claimant had sustained a minor injury, the carrier was not appealing the extent of the injury (i.e. that the injury was limited to the left leg/knee and that disability was limited to not extend past July 5). The carrier requests that we reverse the determinations of injury and disability and render a decision in its favor. The appeals file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The claimant was employed by a temporary employment agency (employer) and assigned to work in a bottling plant (plant). The claimant testified that she worked on a "metal platform" or "scaffold" (actually a metal grate some inches above the floor) checking bottles on a conveyor belt and that in pivoting her left foot fell into a gap between two of the platforms. In evidence are photos of the work site. Both parties refer to the photos and indicate the bottles came out "here" and "this" was where the platform separated. Because of inadequacy of the verbal description we defer to the hearing officer's judgment as to the mechanics of the fall, which was argued in detail. The claimant contends that she injured her left foot, left knee, upper back, mid back, and right little finger in the fall. The carrier contends that the fall could not have occurred as described and points to inconsistencies between various statements, doctor's history and the claimant's testimony. The carrier also points to prior workers' compensation claims and family motor vehicle accidents (MVA) which had initially been denied by the claimant.

The claimant sought medical attention from Dr. E, on March 13. Dr. E's history recites the claimant "lost her balance" and "fell to one knee," and diagnosed cervical radiculitis/neuritis, cervical segmental dysfunction, thoracic segmental dysfunction and "[d]eep and superficial muscle spasms." Dr. E took the claimant off work on March 13 and began chiropractic treatments four times a week.

The hearing officer commented that he found that the claimant had "sustained a minor injury to her left leg/knee" and that she had "disability from the date of injury until the date of the CCH, but not beyond . . . ." Specifically, the hearing officer made the following determinations:

FINDINGS OF FACT

2. The Claimant sustained an injury to her left leg/knee when her foot slipped between two platforms she was standing on.

3. The Claimant did not sustain any other injuries except the left leg/knee, when her left foot slipped between two platforms she was standing on _____.

4. Because of the _____, compensable injury, Claimant has been unable to obtain and retain employment at wages equivalent to her pre-injury wages from March 12, 2000, to, but not beyond, July 5, 2000.

The carrier, in its appeal, argues that the claimant at most sustained a minor abrasion to her left leg/knee and that the reason the claimant was off work was because of her back complaints. In any event, the carrier emphasizes that it does not appeal "the Hearing Officer's implied finding and conclusion that Claimant did not sustain an injury to her left foot, upper back and right pinkie finger, head or neck . . . ."

The evidence and testimony on the mechanics of the injury, if any, were conflicting and were within the province of the hearing officer, as the sole judge of the weight and credibility of the evidence to resolve. We have from time to time commented that hearing officers should define the compensable injury. We find the hearing officer's determinations on the injury to be sufficiently supported by the evidence.

Similarly, on the issue of disability, it was within the hearing officer's discretion, based on the evidence before him, to resolve whether the claimant had any disability as defined in Section 401.011(16) and for the extent of that disability. We only take issue with the hearing officer's attempt to limit disability after July 5, the date of the CCH, by saying the claimant had disability "to, but not beyond, July 5, 2000." The hearing officer is without jurisdiction to attempt to prospectively limit the extent of disability after the date of the CCH. Accordingly, we reform the hearing officer's decision by striking the words "but not beyond" in Finding of Fact No. 5, Conclusion of Law No. 4 and the Decision, as being beyond the jurisdiction of the hearing officer. Regardless of the carrier's plea that it "specifically does not appeal the limited period of disability found by the Hearing Officer" the hearing officer had no jurisdiction to make prospective findings of disability or lack thereof. Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993; and Texas Workers' Compensation Commission Appeal No. 971871, decided October 29, 1997.

Accordingly, we affirm the hearing officer's decision and order as reformed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge