

APPEAL NO. 002158

On August 21, 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 the respondent (claimant) sustained a compensable right foot injury on _____, and that the claimant had disability from March 17, 2000, through April 9, 2000, and from May 15, 2000, 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.

DECISION

Affirmed.

The claimant testified that she was performing her job duties on _____ (all dates are in 2000 unless otherwise noted), when she twisted her right foot while pushing and turning a heavy cart of parts. She said that she felt pain in her right foot and below the ankle bone and that she immediately reported her injury to her supervisor. The claimant went to the employer's nurse on March 15 and 16 complaining of right foot pain that started when she pushed and turned the cart at work.

The claimant went to Dr. P, on March 17 and Dr. P noted the claimant's complaints of right foot and ankle pain after having pushed the cart on March 14. Dr. P diagnosed a sprain/strain of the ankle/foot, prescribed treatment, took the claimant off work, referred the claimant to Dr. D, and ordered x-rays. Dr. A reported that x-rays of the claimant's right foot and right ankle done on March 29 did not show any acute injuries. Dr. D diagnosed the claimant as having a right ankle sprain.

After several weeks, the claimant was released to sedentary work with restrictions of no weight bearing on the right foot. The claimant returned to modified duty at the employer on April 10 and continued working until May 15. Dr. S reported that an MRI of the claimant's right ankle done on April 20 was indicative of joint space effusion and a ligament injury. The claimant said that on May 15 the employer told her to apply for short-term disability benefits for a nonoccupational injury because the carrier had denied her workers' compensation claim and that she was told to go home.

The employer's health and safety manager explained that modified duty is only available for employees with work-related injuries so that when the carrier disputed the claimant's claim of a work-related injury, modified duty was no longer available for her and the claimant was to apply for short-term disability benefits with (C Company) for a nonoccupational injury. In June, C Company denied the claimant's claim for short-term disability benefits because her doctor had reported that she is disabled due to a work-related injury.

The claimant said that in July she changed treating doctors and that her work restrictions have remained in effect. She did not offer medical records from her new doctor. She said that she has not worked since May 15 and that she continues to have pain in her right foot and pain just below the ankle bone.

The claimant had the burden to prove that she sustained an injury in the course and scope of her employment and that she had disability. The hearing officer decided that the claimant sustained a compensable right foot injury on March 14 , 2000, and that she had disability from March 17 to April 9, 2000, and from May 15, 2000, through the date of the CCH. The carrier contends that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. In workers' compensation cases, the issues of injury and disability may generally be established by the claimant's testimony 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). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not against the great weight and preponderance of the evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge