

## APPEAL NO. 002511

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 25, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the claimant has not had disability; and that the claimant is not barred from pursuing workers' compensation benefits under the doctrine of election of remedies. The claimant appealed the determinations on the issues of compensable injury and disability. The respondent (carrier) responded.

### DECISION

Affirmed.

The claimant testified that she began working as a packer for the employer in October 1999; that on \_\_\_\_\_, she was performing her packer job when she injured her back, neck, and shoulders lifting heavy boxes of paper; that she immediately notified her immediate supervisor, KH of her work injury; that the next day she called into work and notified the foreman, RM of her work injury; that she has been unable to work since her injury of February 11; that she went to her family doctor, Dr. M on February 21, 2000, and March 6, 2000; and that she changed treating doctors to Dr. J, a chiropractor, who has her on an off-work status.

KH stated that the claimant never reported a work-injury to her. RM stated that he first learned that the claimant was claiming a work injury on February 25, 2000.

Dr. M's records reflect that the claimant had complaints of back, neck, and shoulder pain and headaches for several years prior to February 2000; that on February 21, 2000, he saw the claimant for complaints of back pain and headaches; and that on March 6, 2000, he saw the claimant for complaints of back, neck, and shoulder pain that the claimant had had for two weeks and noted that the claimant was claiming "workers' comp [sic]."

Dr. J began treating the claimant on March 23, 2000, and he noted that the claimant told him that she was injured on the job on \_\_\_\_\_, lifting heavy boxes. Dr. J diagnosed the claimant as having neck pain, back pain, facet joint fixation, myospasm, and somatic dysfunction; prescribed therapy; and wrote that the claimant is unable to work. Dr. J has continued to treat the claimant. He wrote in August 2000 that the claimant has a work-related injury.

The hearing officer made findings of fact that are adverse to the claimant's claim and determined that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that the claimant has not had disability as defined by the 1989 Act because she did not sustain a compensable injury. There is conflicting evidence in this case. 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 the conflicts in the evidence and determines what facts have been established. While the claimant may have an injury, it was for the hearing officer as the fact finder to determine whether the claimant proved that an injury was sustained in the course and scope of employment. The hearing officer was not persuaded that the claimant proved that she was injured in the course and scope of her employment.

With regard to the claimant's assertion that the Employer's First Report of Injury or Illness (TWCC-1) acknowledged a compensable injury, we note that Section 409.005(f) provides that the employer's report of injury under Section 409.005 may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the Commission or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

We conclude that the hearing officer's decision on the appealed issues is supported by sufficient evidence and is not 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 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge