

APPEAL NO. 002787

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 9, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she has had disability as a result of her compensable injury from _____, through the date of the hearing. In its appeal, the appellant (carrier) asserts that the hearing officer's injury and disability determinations are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, she was working as a cashier at a gas station convenience store. She stated that as she lifted a box of Gatorade bottles, she felt pain in her low back and down her right leg. The claimant sought medical treatment in the emergency room on June 20, 2000, and then began treating with a clinic on July 12, 2000. The claimant stated that the delay between her treatment at the emergency room and her July 12th appointment was caused by her inability to find a doctor who would accept workers' compensation patients. The claimant was diagnosed with a lumbar strain. An MRI was delayed because of the claimant's pregnancy. The claimant testified that she stopped treating with the clinic on August 14, 2000, because her claim was denied and she did not want to encounter further debt with the clinic. The claimant testified that she continues to be unable to work because of her back pain.

Ms. Y, the claimant's supervisor, testified that she saw the claimant coming to work on _____, and that the claimant was "stiff" and "walking straight as a board." Ms. Y further stated she spoke to the claimant on _____, and the claimant told her that she would not be able to come to work that day because her back hurt. Ms. Y testified that she asked the claimant if she had hurt her back at work and the claimant responded that she did not know where she had injured it.

The carrier contends that the hearing officer's determinations that the claimant sustained a compensable injury on _____, and that she has had disability from _____, through the date of the hearing are against the great weight of the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviews the evidence, assesses its weight and credibility, and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9,

1995. Reviewing the hearing officer's injury and disability determinations under that standard, we find no sound basis to disturb those determinations on appeal because the hearing officer was acting within her province as the fact finder in accepting the claimant's testimony and the other evidence supporting her claim over the contradictory evidence presented by the carrier.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge