

APPEAL NO. 010211

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 December 12, 2000. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) compensable (neck, shoulder, and wrist) injury did not include an injury to the lumbar spine.

The claimant appealed, contending that certain factors would show that the hearing officer's decision was against the great weight of the evidence. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a switchboard operator and it is undisputed that on _____, she tripped and fell very hard on her right side. The claimant sought medical attention the next day at a hospital emergency room (ER) and continued to receive care for a neck, shoulder, and wrist injury. The claimant continued to work her regular job for almost a year until October 25 or 26, 1999, when she had cervical spine surgery on November 10, 1999. Although the claimant testified that she told all her doctors about continuing low back pain, and is corroborated in this testimony by Ms. T, a friend, business associate, and registered nurse, the medical reports make no, or scant, mention of lumbar back complaints. A progress note dated May 17, 1999, from Dr. R, the claimant's family doctor, notes that the claimant was given "a ESI" (for her cervical injury), was "sick . . . with severe nausea, pain in her back" Another report by another doctor notes complaints of pain from the top of the claimant's head to "at times to the lumbar region." The claimant recovered from the cervical surgery, began work hardening in early March 2000, and returned to work on April 1, 2000. The claimant testified that her low back pain became more pronounced with the strenuous exercises in work hardening.

On May 22, 2000, the claimant presented to an ER where the doctor noted complaints "of severe low back and left hip and left leg pain . . . for the last four weeks. [Claimant] had a fall about that time and fell onto her left hip" Another doctor also references that incident. The self-insured's risk manager testified that the claimant said she fell at home sometime in 2000. The claimant adamantly denies another injury or fall in April/May 2000. Subsequently, an MRI showed a herniated disc at L4-5 and the claimant had lumbar spinal surgery on June 26, 2000.

The claimant contends that the initial focus of her treatment was to her neck; that doctors told her that her low back problems were caused by her cervical condition; and that pain medication may have masked the low back condition. The self-insured contends that the claimant was evaluated and treated by a number of doctors for 18 months without noting back complaints and that a functional capacity evaluation of March 20, 2000, while

noting cervical loss of range of motion (ROM), showed normal lumbar ROM. The medical opinions on causation of the lumbar herniation are conflicting.

The hearing officer did not err in determining that the claimant's compensable injury of _____ did not include an injury to the lumbar spine. As the claimant noted in her closing argument, Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the issue of whether the claimant injured her low back as she claimed. The hearing officer was acting within his province as the fact finder in determining that the claimant's compensable injury did not extend to the low back. The hearing officer was not required to accept the claimant's testimony as corroborated by Mr. T as fact. Our review of the record does not demonstrate that the hearing officer's determination that the claimant's compensable injury did not extend to the lumbar spine was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge