

APPEAL NO. 030064
FILED FEBRUARY 19, 2003

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 December 4, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on _____, and had disability from April 8, 2002, through the date of the CCH.

The carrier appeals on sufficiency of the evidence basis. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was a department manager in a specialty retail store. The claimant testified that on Friday evening, _____, she injured her back gift-wrapping a large package of dinnerware or pots/pans when the box slipped and she caught it before it fell. It is undisputed that the claimant was not scheduled to work on Saturday, (day after date of injury) and that the claimant reported her injury to the employer on Sunday, (two days after date of injury). The crux of the case is that the claimant initially reported that the box incident occurred around 8:15 pm at the customer service counter, which is covered by a surveillance video camera. Later the claimant asserted the incident occurred sometime between 6:30 pm and 7:30 pm at the gift-wrap table, which is not covered by the video camera. The videotape of the evening in question, in both regular time and slow motion, is in evidence. In dispute is the number of days the claimant had been absent in 2002 and whether her job was in jeopardy.

The dispute revolves purely around factual issues and does not involve questions of law. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. Nothing in our review of the videotapes conclusively proves the hearing officer wrong. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is 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.

In that we are affirming the hearing officer's determination on a compensable injury and the carrier's appeal on disability is principally based on the premise of no compensable injury, we also affirm the hearing officer's determination of disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge