

APPEAL NO. 950239

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 20, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant's (claimant) compensable injury to her knee occurring on (date of injury), did not include injury to her back and that she has not had disability from her compensable injury. Claimant asserts on appeal that she should be compensated for her low back injury, which we will interpret as indicating disagreement with the findings of fact that no causal connection between the incident at work and claimant's back condition was established and that no disability resulted. Respondent (carrier) replies that the decision should be upheld.

DECISION

We affirm.

Claimant worked for (employer) on (date of injury), when she fell off a box and hurt her left knee. The fall was apparent as it happened, and an incident report, prepared at the time, indicated that claimant's knee was hurt, with no mention of her back. While claimant may have lain on the floor for a short period of time, she walked, with assistance to the nurse's office, where the incident report was made; she then returned to work and missed no days at work thereafter until after a herniated disk was discovered over five months later. Claimant received medical care from (Dr. M), whom she saw on August 27, 1993. At that time he recorded that she complained of low back pain, which she had been having for several years. Dr. M also noted osteoporosis and osteoarthritis.

Claimant had been seeing (Dr. R) prior to the accident. The area in which she worked for employer was considered to require lighter effort - claimant had previously had a shoulder problem. On May 21, 1993, prior to the fall at work on (date of injury), claimant complained of pain, especially in the back, of long duration, describing her left back pain as severe. Mild scoliosis was found. On May 24, 1993, Dr. R stated that osteoporosis was present and one vertebrae was fractured. On (date), three days before the accident at work, claimant presented with complaints of "severe pain to the back." Conversely, after the (date of injury), incident, claimant saw Dr. R in October 1993 and on February 11, 1994, without complaining of her back. On February 25, 1994, Dr. R noted again the fracture, but did not say that claimant had complained of it.

Possibly complicating claimant's condition was a fall she had in a restaurant on December 4, 1993. She claimed injury to her knee and left hip and reached settlement with the restaurant. On December 23, 1993, she had an MRI which showed a herniated disc at L-2. In March 1994, claimant provided another incident report for employer in which she identified her knee, hip, and back as having been injured in the (date of injury), fall.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could consider that claimant did not promptly seek medical care for

her back after the fall which did not appear to be serious. She could also give weight to Dr. M's August 1993 entry in which claimant did not mention a fall but referred to long standing back problems. Consistent with Dr. M's entry as to duration of claimant's back problem, Dr. R noted "severe pain" in claimant's back, on (date), which he had said on previous visits to be of long duration. Without considering the restaurant fall at all, the circumstances of claimant's fall at work and her prior and post-injury medical care, together with her continued work, provide a sufficient basis for the hearing officer's findings of fact. See Texas Workers' Compensation Commission Appeal No. 92326, decided August 28, 1992; *compare* to Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992, in which a different result was reached in a serious accident. See also Texas Workers' Compensation Commission Appeal No. 950148, decided March 3, 1995, in which the hearing officer considered pain in the same area as that claimed, which predated the work accident, in finding no injury.

With no back injury found and the knee injury apparently not interfering in claimant's ability to work, the finding of no disability is also sufficiently supported by the evidence.

Finding that the decision and order set forth at the conclusion of the hearing officer's opinion are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge