

APPEAL NO. 950401

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 6, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not injure her low back at work on (date of injury), did not timely report an injury or show good cause for her delay, and did not have disability. Claimant asserts that the decision is against the great weight of the evidence and states that she did injure her back, gave notice the day of injury, and cannot work. Respondent (carrier) replies that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) as a sewing machine operator for approximately five years. She reported that her wrists were injured in (month year). As a result of that injury, she was off work for a period and then returned to light duty work in September 1993. She asserts a new injury to her lower back as occurring on (date of injury), as she was bending over to lift material up to a table. She states that she told a supervisor, (Ms. M), immediately, and Ms. M summoned claimant's supervisor, (Ms. J). Claimant testified that she told (Ms. J) she felt her back pop as she bent over to pick up material. Claimant then said that the supervisors got a chair and rearranged the table so she could sit down to work. She added that when she saw various doctors for her prior wrist injury, she told them of her lower back injury too, but they would not address it.

Medical records indicate that claimant had a physical therapy appointment on (date); the record of that therapy shows no complaint relating to the back. On November 14, 1993, claimant saw (Dr. P), and he did not mention the back. In January 1994, a record from (Dr. C) shows no mention of the back. In January 1994 (Dr. W) records that claimant's neck and shoulders hurt but mentions no low back. On February 2, 1994, Dr. W reported claimant having "generalized discomfort". Then on (date) (four months after the date of asserted injury), (Dr. B), in an independent medical evaluation, reports that claimant complained of low back pain and stated that she had felt her back pop at work. Thereafter in April and May 1994, (Dr. L) reported respectively that claimant had no problem with her lower extremities and did have neck pain. Later (Dr. T) and (Dr. Lo) reported back pain.

In addition to claimant, her sister-in-law, (Ms. P), testified that she went with claimant to see certain doctors to help translate and heard claimant tell Dr. C and Dr. W about her back pain. Ms. P could not describe the building in which either doctor had an office, or either doctor for that matter.

(Ms. Me) testified upon being called by carrier that claimant asked her to write a statement indicating that claimant had hurt her back; Ms. Me said she knew nothing about a back injury. Ms. M testified that she is a quality control supervisor for employer. On

(date of injury), claimant was standing to do her light duty work; Ms. M said that claimant told her she was tired of standing (in her regular job, she had been seated). Ms. M contacted claimant's supervisor, Ms. J, who arranged a chair and arranged a table for her. She never mentioned an injury to Ms. M. Ms. M has seen claimant shopping in the last few months; claimant walked and moved without apparent limitation.

Ms. J testified that claimant reported no injury, no pop in her back. She did say claimant told her that her feet hurt from standing so she got a chair for her.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The hearing officer may infer from the absence of any report of injury in medical records for an extended period of time that claimant was not injured as alleged. See TEIA v. Smith, 592 S.W.2d 10 (Tex. Civ. App.-Texarkana 1979, no writ). The hearing officer could also question the credibility of claimant when two supervisors contradicted her testimony as to reporting injury. In addition, the hearing officer could give significant weight to the testimony of Ms. Me that claimant asked her to provide a statement even though she knew nothing about the incident. The findings of fact that claimant did not sustain a back injury on (date of injury), did not timely report without good cause, and did not therefore have disability are sufficiently supported by the evidence.

Finding that the decision and order 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:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge