

APPEAL NO. 980243
FILED MARCH 18, 1998

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 30, 1997, with hearing officer. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury, the date of injury, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury, that the date of the alleged injury was (alleged injury date), and that the claimant did not have disability. The claimant appeals, urging that she sustained her burden of proof and the overwhelming evidence establishes that she sustained an injury in the course and scope of her employment and had disability. The respondent (carrier) asserts that the decision of the hearing officer is support by sufficient evidence.

DECISION

Affirmed.

The claimant testified that she sustained a sprain/strain injury to her back on (alleged injury date), when she felt a twinge in her lower back while transferring a case of soda from one cart to another. She did not report the injury at the time, continued working, and was not scheduled to work the following day. She states the next day she got up and went to work, but since her back was stiff and hurting that morning, she decided to go to a doctor in case something was wrong. She got permission and was sent to a doctor used by the employer. The report from this visit, dated June 9, 1997, indicates strained neck and low back muscle, the date of injury of _____, and returned the claimant to work on June 10, 1997 with light work for one week. The claimant subsequently went to a chiropractor, (Dr. S), who continued treating her and returned her to work effective August 8, 1997. X-rays taken were basically negative and no other diagnostic tests, *e.g.*, MRI or Ct Scan were performed. The claimant worked until terminated on October 3, 1997, for disciplinary reasons.

The carrier introduced considerable evidence showing, and the claimant acknowledged, that she had a number of disciplinary actions in her tenure with the employer, including tardiness, customer complaints, cash shortages and insubordination. The carrier presented testimony of two supervisors and urged that the evidence shows that the claimant was aware that she was close to being terminated and that this was a spite claim and not a compensable injury. Also in evidence was a restricted duty excuse dated April, 18, 1997, which claimant stated related to some surgical procedure unrelated to her back.

The hearing officer states that he did not find the evidence, either claimant's testimony or the various medical reports (reflecting histories given by the claimant),

sufficient to establish that a compensable injury had been sustained. It is apparent that he did not give preponderant weight to claimant's testimony and found some conflict in the medical evidence before him. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer resolves conflicts and inconsistencies in the evidence and testimony. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). He can believe all, part, or none of the testimony of any witness including the claimant. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). He also assesses the weight to be given the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We have reviewed the evidence and note that even though inferences different from those found most reasonable by the hearing officer may find some support in the evidence, this is not a sound basis to set aside or otherwise disturb a decision. Salazar, et al. V. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Only were we to conclude, which we do not here, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be sufficient reason to reverse his decision. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Christopher L. Rhodes
Appeals Judge