

APPEAL NO. 990220

This case returns following the remand in Texas Workers' Compensation Commission Appeal No. 982729, decided December 30, 1998, for reconstruction of the record. After the records were located, the hearing officer, reissued his decision without holding an additional hearing, finding that the respondent's (claimant) compensable injury of _____, extends to her low back. In its appeal, the appellant (carrier) argues that that determination is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the carrier accepted liability for a left hand injury of _____. The claimant testified that on that date, she was working as a housekeeper for an apartment complex. She stated that she was carrying a vacuum cleaner down a flight of stairs, and she lost her balance. She testified that she tried to grab the handrail to keep herself from falling and her body twisted. She stated that she had immediate pain and swelling in her left hand and that on the morning following the incident, she had pain in her back and her "entire body." The claimant maintained that she reported her injury shortly after it happened to Ms. M, the manager of the apartment complex, but Ms. M would not permit her to complete an accident report. She also stated that she told Ms. M that her back was also hurt on April 17th and Ms. M told her she did not want to hear about it. On cross-examination, the claimant acknowledged that Ms. M called the police to escort her from the property, explaining that she became angry with Ms. M because Ms. M would not give her an accident report to complete or a copy of her separation papers. However, she denied that she had filed the claim for a back injury in retaliation for having been fired and escorted away by the police.

Ms. MM testified that she has been a friend of the claimant's for many years. Ms. MM stated that on the day of the injury the claimant came to Ms. MM's home and told her she had been injured on the job, when she fell on the stairs, injuring her left hand and back. She noted that the claimant's hand was swollen and she could not move it. In addition, Ms. MM stated that the claimant had difficulty walking because of the pain in her back.

On April 27, 1998, the claimant first sought medical treatment with Dr. JB. In progress notes from that visit, Dr. JB diagnosed trigger finger of the left middle finger and "acute SI [right]," noting that she had low back pain that went down her right leg and into her calf. In a "Request for Rehabilitation" form of the same date, Dr. JB referred the claimant for physical therapy for facet arthrosis and right "SI dysfunction." Dr. JB's Initial Medical Report (TWCC-61) also provides that the claimant injured both her left hand and her back. On May 21, 1998, Dr. JB performed trigger finger release surgery on the claimant's left long finger.

On July 1, 1998, the claimant began treating with Dr. QB, a chiropractor. In his TWCC-61, Dr. QB diagnosed a lumbar sprain/strain. An August 1, 1998, lumbar MRI revealed disc desiccation from L3 to S1; however, it did not demonstrate herniation.

The carrier introduced several recorded statements. In her recorded statement, Ms. M stated that the claimant only told her about a hand injury and did not report a back injury to her. Ms. M stated that the claimant became angry and belligerent with her after the injury and that she had to call the police to escort the claimant from the property. Ms. M also maintained that the claimant gave different accounts as to how her injury occurred. Mr. B, a maintenance man at the apartments where the claimant was injured, stated that the claimant told him that she wanted to leave but she did not think she would get unemployment if she quit but she would get those benefits if she was fired, so she was going to work on ways to get the employer to fire her. The claimant denied having such a conversation with Mr. B. Ms. KM, the former manager at the apartment complex, stated that she was in Ms. M's office following the injury when Ms. M was wrapping the claimant's left hand. Ms. KM said she saw the claimant's hand and that it was swollen and red. Ms. KM stated that she saw the claimant on the Saturday following her injury and the claimant was not able to straighten out her middle finger. Ms. KM further noted that the claimant told her that her back had been hurt in the incident.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury and the extent of that injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the testimony and evidence before him and decides what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Generally, the extent of an injury can be proven by the testimony of the claimant alone, if it is believed by the hearing officer.

In this instance, the hearing officer determined that the claimant injured her low back in addition to her left hand in the incident of _____. In so doing, he noted that the claimant complained of low back pain at her initial appointment with Dr. JB. In arguing that the hearing officer's extent-of-injury determination is against the great weight, the carrier emphasizes the evidence it believes adversely affects the claimant's credibility, the same factors it stressed at the hearing. The significance, if any, of those factors on the claimant's credibility was a matter left to the discretion of the hearing officer as the fact finder. A review of the hearing officer's decision demonstrates that he gave more weight to the claimant's testimony and the other evidence indicating that the compensable injury extended to the low back over evidence to the contrary. He was acting within his province as the fact finder in so finding. Our review of the record does not demonstrate that the

determination that the compensable injury extends to the claimant's back is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; accordingly, no sound basis exists for us to reverse that determination on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge