APPEAL NO. 93673

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on July 7, 1993, (hearing officer) presiding as hearing officer. He concluded that the respondent (claimant) suffered a compensable back and neck injury in the course and scope of her employment on (date of injury). Appellant (carrier/agency) contends that there was no or insufficient evidence to support the decision. Claimant, in her response, recounts the evidence and urges affirmance.

DECISION

We affirm the decision of the hearing officer.

The question of whether the claimant sustained an injury in the course and scope of her employment was vigorously disputed at the contested case hearing. The claimant, a Child Protection Services Specialist with the Texas Department of Human Services, testified that on the afternoon of (date of injury), she needed to review data stored in a computer installed in an office separate from her normal work area. The computer was on a desk not designed to be a computer work station. Similarly, the chair (pictures of which are in the record) at the desk was not a standard office chair in that it had no arms or rollers and did not have sup orts for back legs. It had been moved at some unknown time previous to this incident from another office to the computer work station. As she sat, she felt the back of the chair give way. Falling backwards, she reached across herself and grabbed the left side of the desk with her right hand in a twisting motion. She immediately felt discomfort in her back and neck, but the maximum effect was not felt until hours later. This was the first time she ever attempted to use the chair. She reported the incident to her supervisor and left work about two hours later. She has not been to work since the incident and was terminated on June 28, 1993, because she was physically unable to do her job.

On March 5, 1993, claimant's treating physician, (Dr. F), initially found "a substantial likelihood" of "discogenic injury" and prescribed pain medication and physical therapy. An X-Ray showed no obvious degenerative changes in the cervical spine and no evidence of fractures, dislocations, or intervertebral disc space narrowing in the thoracic or lumbar spine. There was some degree of flattening of the lumbar and lordotic curvature "probably consistent with...muscle spasms." Magnetic resonance imagining (MRI) showed "fairly minimal central and somewhat right-sided herniation at L4-5" and "moderate central herniation at L5-S1...." On March 25, 1993, the carrier/agency terminated temporary income benefits based on a conclusion that the claimant did not sustain an on the job injury and that the medical evidence indicated "no gross abnormalities or swelling which would support on the job injury." She has been continuing in physical therapy three or four times a week. Depending on the efficacy of steroid treatment, Dr. F may recommend back surgery.

The only witness to the event was (ML), a co-worker. He recounted what he said in

a letter of March 16, 1993. On (date of injury), he was in the office while the claimant was performing a records check on the computer. As she sat in the chair "it did settle, but not in an apparently excessive manner." According to ML, but vigorously denied by the claimant, the claimant commented to the effect that someone could get hurt in the chair. The chair did not break or appear to ML to be damaged. Other employees continued to use it. Prior to the incident, he saw numerous people use the chair without complaints or obvious discomfort. He never witnessed the claimant fall out of the chair, or "(t)o the best of my knowledge" did he see the claimant injure herself. He testified that the claimant did not scream out in pain, look to be in pain or even seem irritated. He has no reason to doubt claimant's truthfulness.

The carrier/agency attempted to impeach the credibility of the witness and her account of what happened by suggesting possible motives to fabricate this story. The claimant is approximately five feet seven inches tall and weighs about 235 pounds. She is taking medication for a heart condition, had no sick leave remaining at the time of the incident, suffers from stress attacks and has previously filed an unrelated discrimination complaint against her employer.

(JW), the claimant's supervisor, testified that the claimant reported the accident to her and described how it happened. Claimant did not ask to go home immediately, but continued at work for about another two hours. Based on the claimant's description, JW tried unsuccessfully to replicate the incident by sitting in the chair, pushing on it and trying "to make it do what she had described to me." (JW stated she was approximately five feet six inches tall and weighed about 127 pounds). She "questions" whether the claimant was hurt as described, primarily because when she sat in the chair it did not budge or move. As her supervisor, JW counseled the claimant about her job performance several times and noted that due to health problems, the claimant was at work only about three months out of the last twelve. She has no idea how this chair got into the computer area.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corporation., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility to be given the evidence. It is for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701,702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153,161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals level body is not a fact finder, and does not normally pass upon the credibility or witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v.

Soto, 819 S.W.2d 619,620 (Tex. App.-El Paso 1991, writ denied). In reviewing the sufficiency of the evidence to support a finding, only if we determine that the evidence is so weak or the finding so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust do we reverse. In Re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 93477, decided July 19, 1993.

Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal basis. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided on April 16, 1992.

In the present case, as to the existence of an injury, the carrier/agency contends that the hearing officer's decision is not supported by a preponderance of the credible evidence and points out the observations of ML that the claimant did not appear to be in pain; that JW had no problems with sitting in the chair; and that there were discrepancies in the circumstances of the accident as described by the claimant at the hearing and by various written medical reports. As an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer was able to review not only the documentary evidence, but also was able to observe the demeanor of the claimant and other witnesses. The claimant identified a specific incident that she says caused her injury. She experienced pain and communicated this to her supervisor, and sought medical help. The hearing officer concluded that the claimant in fact suffered an injury to her back. The evidence provides sufficient basis for this finding of fact and we will not disturb it on appeal.

The carrier/agency also argues that "(t)here is none or insufficient evidence to support the finding that (claimant) is unable to obtain and retain employment...to the present" and, " ...the herniation...could not possibly have been caused by the minor incident as described by (claimant)." We note that the agency submitted no medical evidence, but relied entirely on the treatment records supplied by the claimant. Dr. F's initial evaluation of March 5, 1993, states that claimant "is unable to work at this time" and anticipates eight weeks of therapy. Other evidence dated May 27, 1993, from (Dr. R), a colleague of Dr. F, states that the claimant is unable to return to work until further notice. In her testimony, the claimant states that Dr. F has yet to make a decision on her ability to return to work. In support of its contention that claimant suffers no disability, the carrier/agency refers to a physical therapy report which diagnoses "occasional tenderness" in the lumbar spine, ML's comment that "I don't think (the way claimant sat in the chair) would have hurt her at all;" JW's questioning whether claimant was hurt at all; and apparent motivations of the claimant, as reflected in her previous work history, to use this as a scheme to avoid work. From our

review of the record in this case, we conclude that the hearing officer's finding that claimant has disability, as defined by Section 401.011(16), is supported by sufficient evidence.

Finding no reversible error and that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be manifestly unjust, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge