APPEAL NO. 94174

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 January 10, 1994, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury, disability and average weekly wage. During the course of the hearing the parties agreed to average weekly wage, removing it as a contested issue. The hearing officer ruled that on (date of injury), the respondent (claimant herein) sustained a compensable injury by aggravating a pre-existing condition. The hearing officer also held that as a result of this injury the claimant had disability from February 2, 1992, through June 30, 1993, inclusive.

The appellant (carrier herein) files a request for review contending that the findings of the hearing officer both as to injury and disability were against the great weight and preponderance of the evidence. Claimant files a response contending that the findings of the hearing officer were supported by sufficient evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm.

The hearing officer in the section of her decision entitled "Statement of the Evidence" accurately details the relevant evidence in this case. Rather than restating the testimony, we adopt this summary from the hearing officer. Suffice it to say, that the claimant testified that on (date of injury), she was injured on the job when she tripped over a telephone cord and fell to the floor. She submitted medical evidence from her treating doctor saying that her fall at work injured her left foot or at least aggravated her pre-existing foot condition (the claimant had undergone previous foot surgery). The medical records indicated the claimant underwent foot surgery on March 9, 1993. The claimant's supervisor testified that the claimant merely "stumbled" over the telephone cord and the incident was so minor that it "could not have broken an egg," and would not have resulted in an injury. The carrier submitted medical reports from a consulting podiatrist stating that, based upon his review of the medical records, claimant's foot problems and surgical repair were related to her previous condition and not an injury of (date of injury).

The claimant testified that she continued to work on and after (date of injury), because she needed her job. She testified that on and after (date of injury), she requested that her supervisor authorize medical treatment for her foot, but that he refused. The supervisor testified that the claimant did not allege she was injured or required treatment until after she was terminated. Both claimant and the carrier agree that the claimant was terminated by her supervisor on February 1, 1992. The supervisor testified that the termination was for poor job performance and insubordination. The claimant testified that she was told by the supervisor that the termination was because the job with the employer was not good for her and she was not good for the employer. The claimant testified that had she not been terminated, she would not have been able to work the following week because of her injury.

Her supervisor testified that had the claimant not been terminated she could have continued to work for the employer. After termination the claimant applied for and received unemployment benefits. The claimant testified that she looked for other work and was only able to find part-time real estate work for which she earned considerably less than she would have had she continued to work for the employer.

The carrier essentially argues that the determinations of the hearing officer as to injury and disability are not supported by the evidence. 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 that is to be given the evidence. It was 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review, we cannot say that the hearing officer erred in finding that the claimant suffered an injury in the course and scope of her employment.

An injury includes an aggravation of a pre-existing condition, whether or not that condition was job related. Texas Workers' Compensation Commission Appeal No. 91094, decided January 17, 1992. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ); Texas Workers' Compensation Commission Appeal No. 93187, decided June 29, 1992. In the present case the claimant's testimony that she was injured on the job is supported by the expert opinion of the treating doctor. While there was contrary evidence in the testimony of the claimant's supervisor and the carrier's expert, we cannot say that the decision of the hearing officer was against the overwhelming weight of the evidence. Further, we note that when a carrier seeks to defeat a claim for compensation because of a pre-existing injury, the carrier must show that the prior injury was the sole cause of the worker's present incapacity. *See* Texas Employers' Insurance Assoc. v. Page, 553 S.W.2d 98 (Tex. 1977).

Section 401.011(16) defines disability as follows: "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Here the claimant testified that she was unable to obtain employment at her pre-injury wage due to her injury. While there is evidence contrary to this, the hearing officer could have chosen to disbelieve it. Taylor v. Lewis, *supra*; Aetna Insurance Co. v. English, *supra*. In any case, the finding of the hearing officer was not against the great weight and preponderance of the evidence.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge