APPEAL NO. 950006
FILED FEBRUARY 14, 1995

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 1, 1994, a contested case hearing (CCH) was. The issues were:

1.Did the Claimant sustain a compensable injury on _____?

2.Did the Claimant have disability as a result of the injury of _____, and if so, for what period?

The hearing officer determined that the claimant did not sustain an injury to her hip, leg and back in the course and scope of her employment on or about _____, and because claimant did not sustain a compensable injury she did not have disability. Appellant, claimant, contends that certain of the hearing officer's determinations are contrary to the "overwhelming weight of evidence" and requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent, carrier, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

It is undisputed that claimant was a college student who was employed by the (employer) at a summer job in employer's packing and distribution department, stacking and bundling newspaper inserts on an "as needed" basis. Claimant began her employment on June 8, 1994 (all dates are 1994 unless otherwise noted). Claimant testified that on _____, after working five hours, she "began to feel pain from . . . the top of my left hip into all of my left leg." Claimant said she told a coworker about the pain and asked if she should tell her supervisor (Mr. G) "that I need to go home?" According to claimant, the coworker said "oh, no, you better not tell [Mr. G]." Claimant said she continued to work that day and worked July 7th, 8th, and 9th. Apparently, claimant's grandfather died and claimant went to (state) for the funeral the week after July 9th. On return from (state) claimant said that she sought medical care from a clinic, on July 16th, and from a hospital on July 18th, "because of the pain got so severe I couldn't wait. . . ." Claimant subsequently began treating with (Dr. B), who took her off work on July 25th. Claimant reported the injury as a work-related injury to the employer on July 18th.

In an Initial Medical Report (TWCC-61) dated July 25th, Dr. B indicated claimant reported that she injured her back stacking papers, found "Spasm paraspinous muscles lumbosacral spine," and prescribed medications and physical therapy (PT). Hospital x-rays of July 17th were negative. Handwritten notes from the hospital and the clinic indicate "no numbness" and "no known injury." Although claimant said that she reported a

work-related injury to both the clinic and the hospital, claimant was unable to show where those complaints of a work-related injury were documented in the clinic or hospital notes.

The hearing officer, in her discussion, commented that the "[c]laimant's testimony is internally inconsistent and is not credited" and notes "[c]laimant's use of a crutch, despite it not being prescribed or provided by any health care provider." Mr. G testified that he was unaware of claimant's injury until he received a telephone call from claimant's aunt around July 18th at which time he referred claimant to his (Mr. G's) supervisor. That supervisor also testified he had no knowledge of the injury until told about it by Mr. G.

The hearing officer determined that claimant had not been injured in the course and scope of her employment on or about _____ and therefore did not have disability. Claimant appealed the decision as being so contrary to the "overwhelming weight" of the evidence as to be clearly wrong and unjust, arguing that claimant's inability to return to "the college of her choice" (she was at the time of the CCH attending a local junior college) "enforces the credibility of the claimant's testimony that she was injured on the job." Claimant also argues that there "was no testimony from any witness . . . that Claimant was injured elsewhere . . . [and] no testimony . . . to show that the Claimant is not disabled."

First, we note that it is the claimant that has the burden to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual matter for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991; Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.);Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969). The burden is not on the carrier to provide testimony or evidence that claimant was injured elsewhere or was not injured on the job as claimant seems to imply in her appeal. Further, it is the hearing officer as the trier of fact who is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer clearly did not find claimant's testimony credible. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the finder 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). We find that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to

be manifestly unfair or unjust as to warrant reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer weighed the evidence that claimant did not report her injury until after she returned from (State), the fact that neither the clinic or hospital notes refer to a work-related injury (and, in fact, the hospital note says "no known injury") and the claimant's admitted ability to perform clerical work with intermittent sitting and standing to reach a conclusion claimant had not sustained a work-related injury and does not have disability.

In that we are affirming the hearing officer's determination that claimant did not have a compensable injury, she cannot, by definition, have disability. *See* Section 401.011(16).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge