

APPEAL NO. 980072

Following a contested case hearing (CCH) held on December 10, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that she does not have disability. Claimant has appealed setting forth various medical records she regards as consistent with having sustained a slip and fall injury to her low back, left hip, and left knee on _____, while working (employer) and as establishing disability from April 29, 1997, to the date of the hearing. The respondent (carrier) asserts that the hearing officer's determinations are sufficiently supported by the evidence.

DECISION

Affirmed.

Claimant testified that while at work on _____, at sometime between 4:15 p.m. and 4:45 p.m., she exited the restroom, caught her shoe on a torn hallway runner and tripped, falling against a steel door and striking her left side but not falling to the floor. She said she injured her left knee, hip, and arm. Claimant further stated that she went to the office crying; that she told (Mr. G), the safety man, that she was okay, that the employer's store closed at 4:30 p.m. and she left soon after the incident to pick up her son from school, and that later that day she told a friend about the incident and the friend came over and took her to an emergency room (ER). Claimant indicated that she had systemic lupus and diabetes and had undergone left knee surgery in November 1996. In evidence was her resignation letter of April 21, 1997, stating that she was grateful for the patience shown her during her period of illness and recovery and that she was "currently experiencing deterioration" in her physical health and needed "to divert all [her] energy to maintaining an optimum level of wellness." The ER records reflect the history of tripping and falling at around 4:30 p.m. and having left lower extremity, left hip, and neck pain. The clinical impression included left knee contusion and neck and lumbar myofascial strain.

Mr. G testified that when he saw claimant in the office, late in the day on _____, she seemed unusually solemn, that it was common knowledge that the next day was to be her last day of employment, and he said he told her the employees were sad to see her go. Mr. G said they talked for several minutes and that claimant made no mention of having slipped and fallen against the steel door; that claimant did say she had been "startled" when she exited the restroom because of the lights not being on; and that claimant gave no appearance of being in pain. He said that (Ms. H), who no longer works for the employer, came in and that claimant became tearful and said she had tripped in the hall coming out of the restroom and had fallen against the steel door; that she insisted she was all right; and that she asked to defer completing an accident report until the next day but was not seen back in the office. Mr. G said it "really threw [him] for a loop" when he heard that claimant

was asserting she had been injured because she had given no indication at the time of being injured, was "distant and evasive," and that they had "to pry it out of her." He said he felt claimant's report of injury was false because she was "not the same person" in dealing with the employer on this injury. Mr. G said that he remembered claimant's face and composure when he first approached her and that she did not appear to be a person who had just lost her balance and shuffled. Mr. G also testified (with demonstration) about the relative locations of the restroom door and the steel door and said he found it difficult to believe the injury could have occurred as claimant stated. He did affirm that there was "a ripple" in the hall carpet at the location described by claimant.

Claimant's medical records contain references to her morbid obesity, diabetes, arthritis, and systemic lupus. (Dr. E) report of August 11, 1994, stated that claimant was referred for nagging left hip pain and left leg pain to the level of the knee. (Dr. LB) reported on January 7, 1997, that claimant had avascular necrosis of the knees, diabetes mellitus diagnosed in 1992, a right knee replacement in 1989, coronary artery disease, endocarditis in 1988, pancreatitis in 1993, a right knee fusion in 1992, and a left knee arthroplasty in November 1995.

(Dr. JB) record of November 18, 1996, states a diagnosis of left knee osteonecrosis and degenerative joint disease and reflects that arthroscopic surgery on the left knee was performed on that date; Dr. B's record of January 7, 1997, states that claimant's left knee does not bother her but that she is having trouble with her hip which is sore; Dr. B reported more left hip pain on February 18, 1997; and on May 6, 1997, Dr. B wrote that claimant fell on _____, at work and apparently has had new symptoms since then with pain in her back that goes down to her hip; and that the left knee bothers her with medial pain but that "she really does not give a good history of hitting her knee."

Dr. E wrote of claimant's follow up visit on May 1, 1997, that she had not been seen for a year and a half, that she continued to have low back and neck pain, that she reported falling on _____, and that she stated that the fall exacerbated her neck and low back pain. On May 12, 1997, Dr. E reported that claimant has an atavistic disc and radicular pain in the S1 dermatome but no neurological findings; that she is diabetic and it is possible she has a radiculopathy on the basis of her diabetes; and that she also has lupus and asked whether this could be causing her symptoms. Dr. E reported on May 28, 1997, that claimant's EMGs were normal and her MRI scan did not show any surgical lesion. He stated that he was "at a loss to explain her symptoms of sciatica" but that this is possibly related to her diabetes. Dr. E wrote on June 16, 1997, that the sciatica symptoms for which he is seeing claimant following her accident of _____, are not a result of lupus or a preexisting condition but rather of her _____, accident. An MRI report of July 17, 1997, revealed a left knee medial meniscus tear and small joint effusion. Dr. E wrote on August 4, 1997, that he saw claimant in May because of new onset of left-sided sciatica, that the EMGs are normal, that the MRI scan does not show any compressive lesion, that he is "really at a loss" to explain claimant's left lower extremity symptoms, and that it is possible her symptoms are due to her very extensive left knee osteoarthritis.

Claimant had the burden to prove that she sustained the claimed injury and had disability as defined in Section 401.011(16), and these issues presented the hearing officer with questions of fact to resolve. It is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and who, as the trier of fact, is to resolve the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal we will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). As she indicated, the hearing officer could consider the absence of medical opinion relating claimant's claimed injuries to her work and the inconsistencies in the reports of Dr. E. She could also consider Mr. G's testimony regarding claimant's demeanor at the time just after the claimed accident and his testimony as to why he doubted the mechanics of the claimed fall as described by the claimant.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge