APPEAL NO. 980076

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 December 15, 1997. With regard to the issues at the CCH, he (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, seeks a reversal of the decision and argues that she met her burden of proof regarding the compensability issue. The respondent (carrier) responds and seeks an affirmance of the decision.[1]

DECISION

We affirm.

The hearing officer fairly summarizes the facts in the decision and we adopt his rendition of the facts. We discuss only those facts necessary to our decision. The claimant alleged that on _____, the automatic doors at the (company name) (employer) caught her poncho and caused her to slip and fall. She testified at the CCH that she injured her back, right buttock, right thigh and right wrist. The employer's vice president, (Ms. ST), its benefits coordinator, (Ms. C), its clinical supervisor, (Ms. B), and its plant operations deputy assistant, (Ms. SH), all provided statements to the effect that no one witnessed the claimant's falling and the doors did not malfunction. Ms. C also testified at the CCH and said the door had a "photo eye," which detects a person's presence and keeps the door open when someone passes through it. On September 30, 1997, the door manufacturer's inspector, (Mr. W), certified that the doors were "well within compliance standards."

The claimant said she immediately went to the hospital's emergency room (ER), where (Dr. HE) noted palpitation in her lumbar spine and ordered x-rays. The x-rays were normal and she was instructed to refrain from working that day and to return to work the next day. On June 26, 1997, she went back to the ER, where (Dr. HA) noted she was in no apparent distress and had "no obvious injury." Dr. HA assessed that she had a right wrist, right hip and right lower back contusion and prescribed physical therapy. Dr. HE referred her to (Dr. D), who on July 1, 1997, diagnosed a right buttock soft tissue injury and released her to return to limited-type work. She began treating at a military medical facility on July 2, 1997. On August 6, 1997, one of the facility's representatives, (Lt. Col. F), took the claimant off work for two weeks. On August 26, 1997, the carrier's required medical examination doctor, (Dr. B), certified that the claimant reached maximum medical improvement with a zero impairment rating. On September 12, 1997, another one of the military medical facility's representative, (Maj. K), stated that the claimant had low back,

[1]The claimant submits two requests for appeal and the carrier submits two responses thereto. All requests and responses are considered because they are all timely.

right hip and right wrist contusions attributable to her alleged _____, compensable injury and had been disabled since then. Several of the records referred to a back injury resulting from a July 1995 motor vehicle accident. The claimant testified that she had been working full time as a teacher's assistant since September 27, 1997.

An injury is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). An employee has the burden of proving, by a preponderance of the evidence, that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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. Section 410.165(a). The hearing officer noted, in the "Statement of the Evidence" portion of the decision, that the military medical facility's records revealed that at times the claimant complained of a back injury occurring prior to the date of the alleged injury. The claimant urges on appeal that the inconsistencies in the doctors' reports were insignificant. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the compensability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. Disability, by definition, depends upon there being a compensable injury. *Id*. Since we affirm the determination that the claimant did not sustain a compensable injury, we also affirm the determination that she did not have disability.

The claimant complains on appeal that she was not afforded a CCH at another Texas Workers' Compensation Commission field office. We dismiss her complaint regarding venue since the record reflects and the decision and order states that the parties stipulated to venue in the field office where the CCH was conducted. The claimant also complains generally regarding her ombudsman's assistance. The record reflects that the claimant was aware of her right to obtain legal counsel and that she agreed to the scope of

the ombudsman's assistance. We generally do not review whether an ombudsman satisfactorily assisted an employee and, therefore, we dismiss the claimant's complaint regarding such assistance.

The decision is not against the great weight and preponderance of the evidence and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge