APPEAL NO. 980099

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 16, 1997, a contested case hearing was held. With respect to the disputed issues before him, the hearing officer determined that appellant (claimant) had not sustained an injury in the course and scope of employment on _____ (all dates are 1997) and that claimant did not have disability as that term is defined in Section 401.011(16).

Claimant appealed, emphasizing her testimony as being truthful, suggesting racial bias and pointing out a height difference (which would be obvious to the hearing officer) as it relates to a photograph. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) urges affirmance.

DECISION

Affirmed.

The evidence is somewhat in conflict. Claimant was employed as an assistant cook at a burger restaurant. Claimant testified that on _____, while returning from a walk-in cooler with a chicken breast in each hand, she slipped in a grease/water spill on the floor (estimated to be 12 x 18 inches). It is undisputed that claimant did not fall to the floor, but was caught by (RT), the restaurant manager, and (DE), a cook and coworker. Also present in the immediate vicinity was (GB), a part owner of the restaurant. It is claimant's contention that as she started to fall she twisted and injured her back. It was the testimony of GB, RT and DE that claimant came from the cooler, was standing between RT and DE when she started "going down" or "slumped down," with RT catching claimant's right arm and DE catching her under her left arm. All three, GB, RT and DE, deny that there was a puddle of grease/water, at least of the magnitude claimant suggests, on the floor. There was a conflict in testimony whether the floor was glazed brick or anti-skid linoleum. GB testified that he asked claimant if she was all right and that she responded "I think so." GB also testified that in his opinion claimant was "having some kind of abnormal neurological event" because claimant was "quivering and her eyes were rolled back in her head." GB said that he based his observations on experience with family members who have epilepsy. The extent of claimant's other previous seizures is not clear, although claimant testified to having a seizure some years ago and the hearing officer stated that claimant had admitted to a seizure on _____, but "that it occurred at home after she left work." That comment was apparently based on an undated nurse's note (Carrier's Exhibit G). It is undisputed that GB took claimant to a chair, where she rested a while, briefly returned to work complaining of headaches and left work early.

Claimant testified that she went to a hospital emergency room the next day, _____, and again on _____. Handwritten notes (which are somewhat illegible) indicate visits

on _____, with complaints of left shoulder and back pain. The notes indicate muscle strain and prescription of medication. An x-ray of the thoracic spine was negative. Claimant was seen by (Dr. C), who, in a report dated April 30th, recites a history of back strain, an examination which shows "no objective abnormalities" and that he has no further treatment for claimant. Dr. C referred claimant to (Dr. S). A report dated July 24th, from Dr. S, states he had "done a thorough examination" and that the problems claimant is having are work related. Claimant apparently had some 13 chiropractic treatments between July 9th and August 5th.

Carrier's position is that claimant did not slip or fall, that any slip she did have was due to a seizure, that whatever event she had did not result in an injury as defined in Section 401.011(26) and that claimant did not have disability. The hearing officer determined that claimant had failed to prove that she had slipped and injured herself in the course and scope of her employment on _____, that claimant had "suffered at least one seizure" on _____ and that claimant had only complained of a headache on _____. The evidence is obviously in conflict as to exactly what happened at the restaurant on the day in question and whether it was that event or a seizure which might have caused claimant's back strain. The Appeals Panel has many times held that Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of 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 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 Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive, but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. In this case, the hearing officer heard the testimony and was able to observe the demeanor of the witnesses and obviously gave greater weight to carrier's witnesses.

We understand that the claimant reasserts the truthfulness of her testimony on appeal but, as we have noted, it is the hearing officer, not the Appeals Panel, that is the sole judge of the weight and credibility that is to be given to the evidence. Further, our review of the record does not indicate that there was any bias against the claimant based on race. As to claimant's height, as compared to a photograph in evidence, the hearing officer, seeing the claimant, was in a much better position to judge how accurate the photograph in evidence was.

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:

Elaine M. Chaney
Appeals Judge

Christopher L. Rhodes
Appeals Judge