APPEAL NO. 980203
FILED MARCH 16, 1998

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 9, 1998. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these determinations, expressing her disagreement with them. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed. We will not consider evidence available at the time of the CCH, but submitted by the claimant for the first time on appeal. Section 410.203(a)(1) and Texas Workers' Compensation Commission Appeal No. 93493, decided November 3, 1993.

DECISION

Affirmed.

The claimant worked as an aide in a retirement community. She testified that she injured her low back on _____, while helping a patient move from a bed to a wheelchair. During this process, she said, she felt pain in her low back and down her left leg. She said she immediately sat down and requested help. She was transported to an emergency room (ER) and eventually diagnosed with herniation at L5-S1. The charge nurse who responded wrote a statement of the same date which reflected the claimant's account and commented about complaints of left leg pain. ER records reflect this same history. The claimant has not worked since _____.

(Dr. L), the claimant's treating doctor, wrote on October 24, 1997, that the claimant's job was "consistent with the type of job that can produce a back injury . . . . She denies any previous problems, and certainly, her history is absolutely consistent with the type of injury she describes." The claimant testified that she was in a car accident on her way to her first visit on September 9, 1997, with Dr. L, but denies that she was injured in the accident. She also admitted at the CCH that she had a back injury while working for a previous employer. Medical records of an October 11, 1996, visit refer to a lumbar strain. An acquaintance of the claimant described in a recorded statement a conversation that the claimant had with her, on October 6, 1996, in which the claimant allegedly told her that she, the claimant, was happy to stay home on the money she was receiving from workers' compensation benefits and that she "probably didn't" hurt herself in her current job. The claimant vehemently denies ever having said this. In a letter of December 22, 1996, Dr. L, after apparently finding out about the claimant's prior history of back problems, refers to a previous mid-back complaint and said this "has nothing whatsoever to do with her new injury of _____, in which she has low back pain, pain down her left leg, and obviously has some type of low back problem, not a thoracic problem."

The claimant had the burden of proving that she injured her lower back on _____, as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact, Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993, and in this case could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. The hearing officer commented that she found the claimant "not credible." The claimant's testimony obviously conflicted with the statement of her acquaintance discussed above. Dr. L's letter of October 11, 1996, relied on incomplete information in its reference to no prior history of problems, and his letter of December 22, 1996, commented on a past thoracic spine problem when there was evidence of a prior lumbar problems. The hearing officer, as fact-finder, was the sole judge of the weight and credibility of the evidence. Section 410.165(a). In the discharge of her responsibility to determine what facts had been established, she could accept or reject all, part, or none of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 26, 1993. As an appellate review body, we will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). We decline to reweigh the evidence in this case or substitute our opinion of credibility for that of the hearing officer, but find that the evidence deemed credible by the hearing officer was sufficient to support her determination that the claimant did not sustain a compensable injury on _____, as claimed.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

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

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge