APPEAL NO. 990035

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 19, 1998, a contested case hearing (CCH) was held. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable back injury on _____ (all dates are 1998 unless otherwise stated) and that claimant did not have disability because claimant "did not have a compensable injury."

Claimant appeals the adverse findings, contending that the "overwhelming medical evidence" shows that claimant had sustained a compensable injury and that claimant's doctor had taken her off work and prescribed a certain course of treatment. Claimant requests that we "overrule" the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a salesperson for (employer). Claimant testified that on _____, as she was picking up a basketful of hair color, she felt a "back strain" or "pull." Claimant said that she reported the incident to her manager, who told her to go home and see a doctor other than a chiropractor. Claimant sought treatment from Dr. G.

Dr. G, in an Initial Medical Report (TWCC-61) of an office visit on May 1st, noted a complaint of "pain to low back since last noc." (The hearing officer, in his Statement of the Evidence, notes "the term 'noc' is a common abbreviation . . . for the work [sic, word] which means night.") The hearing officer notes this is a different history than was given to the employer. Dr. G diagnosed a lumbar strain, prescribed medication, and released claimant back to work with some restrictions. Claimant said that she returned to work and continued working until Saturday, May 2nd, when she had to leave work because of back pain. Claimant subsequently saw Dr. W, D.C., on May 5th. In a TWCC-61 dated May 15th, for the May 5th office visit, Dr. W recited the "lift & turn simultaneously" incident, diagnosed a lumbar strain/sprain, lumbosacral neuritis/radiculitis and thoracic muscle spasms, prescribed physical therapy and ordered a functional capacity evaluation (FCE). Several other Specific and Subsequent Medical Report (TWCC-64) reports of different dates all show a date of visit of May 5th. Dr. W testified at the CCH that the date of visit was written in by his secretary and was incorrect and the actual date of visit was close to the date the form was signed. Those forms, and medical off-work slips, take claimant off work until July 15th. Also in evidence are numerous progress notes of varying dates. An FCE was performed on June 11th, which indicated claimant needed conditioning and could do light level work. Claimant testified that she began looking for work on July 15th and found other employment with another employer on July 27th.

At the heart of this dispute is what claimant said to an adjuster. Claimant contends that she spoke with a female representing the carrier on May 1st and again a few days later. Carrier introduced an affidavit from a male adjuster regarding a conversation he had with claimant on May 5th. Claimant denied speaking with a male adjuster. In any event, claimant apparently responded to a question that she had not had any prior injuries. Carrier presented evidence that claimant had, in fact, had a prior low back compensation claim in November 1994 while working for a different employer and had been in a motor vehicle accident in 1992 while working for yet another employer. Claimant contends that these were minor, no lost-time injuries and that there was no record with the Texas Workers' Compensation Commission about "a previous accident back in 1994." Further, claimant contends, and offers medical reports, that she had completely recovered from any injuries. The hearing officer, in his Statement of the Evidence, and in discussing claimant's testimony regarding any prior injuries, on two occasions commented that "[c]laimant was not truthful."

Dr. W testified at the CCH that he could distinguish between an old injury (more than 90 days old) and a new injury (sustained in the last 72 hours). Dr. W was of the opinion claimant sustained a new injury on _____.

Claimant seeks to use the Employer's First Report of Injury or Illness (TWCC-1) offered into evidence as proof that "claimant reported that she suffered a low back strain while picking up a basketful of hair color." Although not objected to by the carrier, we note that Section 409.005(f) provides that the TWCC-1 may not be considered to be an admission by or evidence against an employer or carrier where the facts are in dispute. Consequently, we decline to consider the TWCC-1 as evidence that claimant sustained the injury as alleged.

Claimant also contends that the medical evidence shows that claimant sustained the claimed injury. We note that, at best, the medical reports show that claimant has a lumbar strain/sprain. Although Dr. W was of the opinion that claimant's strain/sprain was the result of the lifting/twisting injury, a fact finder is not bound by the testimony of a medical witness where, as here, the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to him by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). As the fact finder, it was the hearing officer's obligation to consider the evidence before him, to decide what weight to give that evidence, and to determine what facts had been established. In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that she was injured lifting the basket of hair color. We have often noted 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 as well as the weight and credibility that is to be given 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 Company 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).

Our review of the record does not demonstrate that the hearing officer's findings and conclusions were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for reversing it on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability as the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16). Although another fact finder may have drawn different inferences from the evidence, which could have supported a different result, that does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Alan C. Ernst
Appeals Judge