

APPEAL NO. 990047

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 10, 1998. She 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.

DECISION

Affirmed.

The claimant worked as a customer service representative. She testified that on _____, she left her workstation cubicle. Upon her return, she said, she proceeded to sit down on her chair, but someone had "messed" with it by pushing the armrests toward the center of the chair and lowering the seat. She said that as she sat down, her buttocks struck the armrests. She said she was able to brace herself with her feet out to keep from falling to the floor. She further testified that everyone around her workstation was laughing at her; she was shaken up by the incident; cursed; and was mad at the practical joke played on her. She said her back started hurting after she went home and she experienced urinary leakage. She first saw a doctor on July 20, 1998. The various medical reports reflect a history of the incident as provided by the claimant. The claimant's cousin also testified that she never told Ms. B, the claimant's supervisor, that these complaints of pain and injury were just a game the claimant was playing because she was mad at her coworkers and employer for allowing the practical joke to happen. Although the claimant denied ever hitting the ground, her cousin testified to her belief that the claimant had struck the ground.

Ms. B testified that she was "monitoring the area" where the claimant worked by walking up and down the aisles of cubicles. She said she was about two feet away from the claimant when the incident took place. Her description of the incident was that she saw the claimant place her hands on the armrests of her chair at which point the claimant noticed they were moved and "just screamed out profanity and started screaming and hollering and threw her chair backwards right past me . . . and all the way across to the other side where the other seats were . . . I tried to get control of the situation." She also said that the claimant blamed another employee and wanted him fired. She said she never saw the claimant in a falling position or on the chair. According to Ms. B, the next morning at a meeting, the claimant told her she was glad no one got hurt.

Mr. A, a coworker, testified that he sat next to the claimant with a short wall, over which he could see, separating their workstations. He said he heard the claimant hollering, screaming, and cursing and that she was slightly bent over the chair with her hands on the armrest. He said he then saw the claimant shove the chair backwards, but never saw her on the floor or sitting on the chair with her feet out. Included in the evidence were the

recorded telephone interviews of several other employees who said they were present at the time and did not see the claimant sit in the chair or otherwise fall, but did see her push the chair backwards.

The claimant had the burden of proving she sustained an injury 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 for the hearing officer to decide and 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 in her decision and order that "I find the more credible evidence established that Claimant's arm rests were 'messed with,' which angered the Claimant, and as a result, Claimant pushed the chair across the floor. Further, while I believe that there was an incident involving Claimant and her work chair, I do not find that Claimant has established by a preponderance of the credible evidence that as a result of the _____ chair incident, that she injured her back or any other part of her body." The claimant stated in her appeal that she was truthful; that the employer knew she injured herself; and that Ms. B and Mr. A "are not being truthful and are protecting their jobs." The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). As fact finder, the hearing officer could accept or reject in whole or in part any of the evidence, including the testimony of the claimant. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. It has also been observed that the history of an injury as reported by a claimant and contained in the history portion of medical reports does not necessarily compel a finding that an injury occurred as recited in the history. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Judging the credibility of testimony and evidence presented at a CCH is uniquely the responsibility of the hearing officer. We will reverse a factual determination of a hearing officer only if that determination 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence deemed credible and persuasive by the hearing officer 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:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge