

APPEAL NO. 990205

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 1999. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. In her appeal, the claimant argues that the injury and disability determinations are against the great weight and preponderance of the evidence. The appeals file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed.

The claimant testified that on or about _____, she was working as a cashier for (employer) and had been working there for about a week. She stated that as she was scanning an item, she bumped her wrist on something, causing a bruise and pain. On March 20, 1997, the claimant sought medical treatment from Dr. V, her family doctor. In progress notes from that date, Dr. V noted that the claimant had a "1 cm tender nodule on the medial aspect of her right wrist." In progress notes from a May 30, 1997, visit, Dr. V stated that the claimant was still having trouble with her right wrist and he referred her to Dr. B, for an orthopedic consultation. In a report of June 2, 1997, Dr. B noted that the claimant was a cosmetologist and a cashier and that the claimant noticed a bump and swelling in her right wrist after she had worked for about a month with the employer. Dr. B diagnosed "a right volar ganglion that appears to have began with her job at [employer]." On August 4, 1997, Dr. B performed surgery to excise the right volar ganglion cyst. In progress notes of August 18, 1997, Dr. B stated that the claimant's excision was healing nicely, that there was no swelling or bruising, and no signs of infection. In progress notes of February 5, 1998, Dr. B again stated that the claimant's right volar ganglion "began with her job [at employer]." In a Report of Medical Evaluation (TWCC-69) of September 21, 1998, Dr. B certified that the claimant reached maximum medical improvement on July 10, 1998, with an impairment rating of one percent.

The claimant introduced a handwritten statement from Ms. G, who is also a cashier with the employer. Ms. G stated that she was at work when the claimant hurt her wrist working as a cashier on _____, that the claimant showed her wrist, which was swollen and bruised, to Ms. G, and that Ms. G advised the claimant to report her injury to Mr. C, the store manager. Finally, Ms. G stated that the claimant later told her that Mr. C would not let the claimant fill out an accident report when she reported her injury to him.

Mr. C testified that he was the claimant's supervisor in _____, and that he did not learn that the claimant was alleging a work-related injury until August 19, 1997, the date he completed the Employer's First Report of Injury or Illness (TWCC-1). In a recorded statement he gave to an adjuster for the carrier, Mr. C stated that in _____, the claimant

told Ms. B, employer's bookkeeper, that her wrist hurt and that Ms. B told him of the claimant's complaints. He stated that at that time he believed the claimant's wrist was sore because she was a new cashier and was not used to the work. In her recorded statement, Ms. B denied that she had any knowledge of a wrist injury that the claimant was claiming in _____. In addition, Ms. B stated that she saw the claimant shortly before she had surgery to remove the cyst from her wrist. She stated that the claimant showed her the bump on her wrist and told her that she had gotten it from performing her duties as a cosmetologist. The claimant denied that her work as a cosmetologist caused her cyst, noting that she did not begin to work as a cosmetologist until May 1997, after she had been diagnosed with the cyst. On cross-examination, the claimant acknowledged that she was licensed as a cosmetologist prior to beginning her employment with the employer and that she had a job as a beautician; however, she stated that the salon where she worked was not busy and that she did not do very much work on the customers.

Under the 1989 Act, the claimant has the burden of proving that she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. That issue presented a question of fact to be resolved by the hearing officer. The hearing officer is the sole judge of the weight, credibility, relevance and materiality of the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts and inconsistencies in the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of any witness and could properly decide what weight she would assign to the other evidence before her. *Id.* We will not substitute our judgment for that of the hearing officer where her determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

While we have generally noted that injury and disability may be established by the testimony of the claimant alone, Texas Workers' Compensation Commission Appeal No. 931002, decided December 13, 1993, it is well established that a hearing officer is not bound to accept the claimant's testimony at face value; rather, it only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mut. Ins. Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). It was within the hearing officer's province to reject the claimant's testimony about her injury, as well as the evidence from Dr. B that the ganglion cyst was causally related to her work as a cashier. As the fact finder, it was the hearing officer's obligation to consider the evidence before her, 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 had sustained an injury at work on _____. She was acting within her province as the fact finder in so finding. Our review of the record does not demonstrate that that determination is 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, *supra*; Cain, *supra*. 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).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge