

APPEAL NO. 990366

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 19, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and, if so, whether she had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals, urging that the findings of the hearing officer are against the great weight of the credible evidence and that the decision be reversed. The respondent (carrier) argues that the claimant's appeal only relates to the weight of the evidence as assessed by the hearing officer and that there is sufficient evidence to support the decision, which should be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer fairly and adequately sets forth the evidence in this case and will only be briefly summarized here. Succinctly, the claimant states that she slipped on a piece of ice and fell on her back while filling an ice container on _____. She testified that she told DB, who was a baker on duty at the time, and that he said to wait until the assistant manager came in, which she states she did. She also states that the assistant manager told her to check it out and that she went to an emergency room (ER) and then returned. A statement from DB denies any knowledge of the claimant sustaining an injury on _____, that he did not believe the claimant was injured, and that he only heard about it later in July. The claimant filled out an Employer's First Report of Injury or Illness (TWCC-1) on July 17, 1997. In any event, the claimant stated at one point that she worked the day of the claimed injury and part of the next day, but has not worked since June 20, 1997. There were no records introduced from the ER; however, the claimant states she tried to get them but they could not be located.

The claimant stated she did not seek further medical treatment until she saw a chiropractor, Dr. T, on July 15, 1997. He sets forth a history of the claimant falling off a stool; diagnoses a lumbar/thoracic sprain, strain, and dysfunction; states treatment will consist of conservative therapy; and takes the claimant off work from July 17 to July 21, 1997. Dr. T also mentions secondary complaints of intermittent headaches, which had an onset of several years ago. The claimant's testimony was somewhat uncertain as to specific dates but indicated that she received regular treatment from Dr. T over the ensuing period; however, there are no medical records until February 1998. A medical record shows that on April 20, 1998, Dr. T certified that the claimant reached maximum medical improvement.

The hearing officer did not believe the claimant was consistent in her statements surrounding the incident and treatment and concluded that the medical records were not convincing in showing an injury on _____, or disability. As the sole judge of the

relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)), the hearing officer resolves conflicts and inconsistencies in the testimony and evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The testimony of a claimant presents a factual issue for a hearing officer and she can believe all, part, or none of the testimony of any given witness. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). A claimant's testimony does not have to be accepted at face value by the fact finder. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). In reviewing the factual findings of a hearing officer, we look to see if there is some evidence to support the findings and, if so, we look to all the evidence in the case and set aside the findings and decision if, from our review, we conclude that the findings and decision are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. See also 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 have reviewed the evidence and record and do not conclude that the findings, conclusions, and the decision of the hearing officer are against the great weight and preponderance of the evidence. Applying our standard of review, we do not find a sound basis to disturb the decision and order, and thus we affirm both.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge