

APPEAL NO. 990554

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 February 23, 1999. He (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.

DECISION

Affirmed.

The claimant worked as a laundry and hospitality aid at a residential nursing center. She testified that about 7:30 a.m. on the morning of _____, there was water on the floor in front of the washing machine. She said that as she was pulling clothes out of the washer, she slipped and fell, injuring her neck, the left side of her back and left leg. She said the washing machines were constantly leaking, as were the ceiling pipes. After she fell, she said, her pants were wet so she put on a resident's robe that was in the laundry room and placed her clothes in the dryer. She testified that she then mopped up the water on the floor and put the mop in a bucket. At some point in time, Ms. G, a coworker, walked into the laundry room, saw the claimant wearing the robe, and the claimant told her what had happened. Shortly thereafter, the claimant said, she received a call from her daughter's school about an emergency. She went to the school and then to Dr. M. Dr. M's report recorded this history, but noted no significant bruising, swelling or other obvious abnormality. His diagnosis was mechanical myofascial back and leg pain. He returned her to modified duty the next day. The claimant next saw Dr. A, D.C., who diagnosed lumbar and cervical sprain/strain. Similar conclusions were reached by Dr. G. On January 20, 1999, Dr. C, D.C., examined the claimant at the request of the carrier. He diagnosed cervicolumbar radiculitis with possible postconcussive syndrome and headaches, which he considered consistent with the description of the injury.

Mr. N, a supervisor and safety director, testified that he went to the laundry room about 9:45 a.m. and saw no leaks. He also noticed a mop standing in a bucket, but the mop and bucket were dry. He did notice a robe in the laundry room. In a transcribed recorded statement, Ms. G said that when she came into the laundry room she saw the claimant in a resident's robe. The claimant told her she had fallen. Ms. G said she did not notice any leaks on the floor and the claimant made no complaints of pain.

The claimant had the burden of proving she sustained a compensable injury as alleged. 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 in this case be proved by the testimony of the claimant alone if found credible. Because the claimed slip-and-fall incident was unwitnessed, the resolution of the disputed issues became essentially a question of the claimant's credibility. The hearing

officer, who observed the claimant's testimony, commented in his decision and order that the "[c]laimant was neither truthful nor credible." Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The fact that a history of this incident as provided by the claimant was contained in a medical report does not establish that the accident occurred as related. Texas Workers' Compensation Commission Appeal No. 931136, decided January 27, 1994. 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 claimant for that of the hearing officer, but find the evidence sufficient to support his determination that the claimant did not sustain a compensable injury on _____.

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

Tommy W. Lueders
Appeals Judge