APPEAL NO. 990722

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 March 17, 1999. The issue at the CCH was whether the respondent (claimant) had disability resulting from the injury sustained on _____, and if so, for what period. The hearing officer determined that the claimant had disability resulting from the injury sustained on _____, from August 14, 1998, through October 12, 1998. The appellant (carrier), urges that the hearing officer's decision should be reversed and a new decision rendered that the claimant's off-work status was due solely to her pregnancy and not due to the alleged injuries associated with the _____, event. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant fell at work injuring her back and ankles. The claimant testified that she was injured when she slipped and fell while working as a bus driver. The claimant testified that she was pregnant at the time of the injury and was due to deliver on September 19, 1998. According to the claimant, she was taken off work beginning June 16, 1998, because it was a high-risk pregnancy, and she returned to work on August 4, 1998. The claimant testified that she was hospitalized following the injury, from _____, through August 24, 1998. The claimant delivered her baby, nine days after the injury. The claimant sought medical treatment for her back and ankle injuries with Dr. B on August 28, 1998. On September 28, 1998, Dr. B noted the claimant had mid thoracic and low back pain and the claimant was continued on exercises and started on medication. Dr. P, the claimant's obstetrician, indicates in a letter dated October 2, 1998, that the claimant fell on the job on _____, causing premature labor, and was admitted into the hospital on _____, as a result of the accident. Dr. B states in a report of November 30, 1998, that he took claimant off work secondary to back pain from August 28, 1998, through October 13, 1998.

The carrier asserts that the claimant's off-work status was due solely to the claimant's pregnancy and birth of her child and not due to the incident of _____. The carrier emphasizes that: the claimant was off work for several weeks prior to the injury due to her high-risk pregnancy, that the claimant's obstetrician and had planned for the claimant to be off work for six weeks following the birth of her baby, and that none of the the claimant's other children were born at full term. The carrier asserts there is no medical evidence indicating the claimant was disabled as a result of the _____, injury.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The burden of proof is on the claimant to show that her disability was the result of her compensable injury. Texas Workers' Compensation Commission Appeal No. 93953,

decided December 7, 1993; Garcia v. Aetna Casualty and Surety Company, 542 S.W.2d 477 (Tex. Civ. App.-Tyler 1976, no writ). An injury suffered in the course and scope of employment does not have to be the sole cause of the inability to obtain and retain employment at wages equivalent to the preinjury wage and an employee's predisposing infirmity or condition does not preclude compensation. Baird v. Texas Employers Insurance Association, 495 S.W.2d 207 (Tex. 1973); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex 1977). A claimant need only prove that the compensable injury was a cause of the inability to obtain and retain employment at the preinjury wage, not that it is the sole cause of that inability. A carrier, however, who asserts that something other than the compensable injury is the sole cause of the disability has the burden of proof of the sole cause. Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer felt there was sufficient evidence that the claimant's inability to obtain and retain employment was caused, in part, by the fall at work. The hearing officer found that though there were other significant factors which also prevented the claimant from returning to work, the fall at work was a contributing cause of the claimant's inability to work. To the extent there were conflicting medical reports, this was an issue for the hearing officer to resolve. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant sustained disability resulting from the injury sustained on _____, from August 14, 1998, through October 12, 1998.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge