APPEAL NO. 990840

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 30, 1999. She determined that on _____, the appellant (claimant) did not injure any part of her body while working for the employer; that the claimant did not notify the employer of the claimed injury within 30 days of the claimed injury; that she did not have good cause for not timely notifying the employer of the claimed injury; and that the respondent (carrier) is relieved of liability because of the claimant's failure to timely notify the employer of the claimed injury. The claimant filed an appeal which will be treated as an appeal of the sufficiency of the evidence to support the determinations of the hearing officer. The carrier replied, urged that the evidence is sufficient to support the determinations of the hearing officer, stated that a document attached to the claimant's appeal should not be considered, and requested that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant began working for Mr. and Mr. and Ms. F to take care of their infant child and perform some light housekeeping in April 1998. In May 1998, Mr. and Ms. F contracted with the employer to provide those services and the claimant became an employee of the employer. The claimant testified that on _____, she tripped and fell in the kitchen of Mr. and Ms. F while working and that she injured her low back, shoulder, and head and burned herself on the abdomen with a hot liquid she was carrying in a cup. She said that she did not tell Ms. F about the injury when she came home that day, that she hurt more after she went home, that the next morning she told Ms. F about the incident, and that she does not know if Ms. F understood what she said. Ms. F testified that on the evening of Thursday, July 16, 1998, her husband called the claimant and told her that she was no longer to take care of their child. Ms. D, the director of the employer, testified that on July 17, 1998, Ms. F called and advised her that Mr. F had terminated the claimant the night before. The claimant testified that she called the employer on July 20, 1998, to tell Ms. D that she had been injured and that she was told that Ms. D was not available. Ms. D testified that she was out of town attending a meeting on Monday July 20, 1998; that when she returned on July 23, 1998, she had a message stating that the claimant had called; that the message did not state why the claimant had called; that she thought that the claimant had called about her termination; that the claimant told her that she had been injured when she slipped and fell about three or four weeks earlier; that she had no clue that the claimant may have been injured before she talked with the claimant on July 23, 1998; that she called Ms. F and told her what the claimant had said; and that Ms. F told her that she was surprised to hear that. Ms. F testified that the first time she heard that the claimant said that she was injured was on Alleged injury, when she was told that by Ms. D. The claimant testified that she took over-the-counter medication for her pain and headache after she was injured and that she did not go to a doctor until after she was terminated.

We note that the document attached to the claimant's request for review is a document in which she requested medical records from a primary care facility. That document would not have caused the hearing officer to have rendered a different decision and it will not be considered on appeal. We also note that the list of claimant's exhibits in the hearing officer's Decision and Order indicates that Claimant's Exhibit No. 1, medical records, was not admitted into evidence when in fact it was. We reform the list of claimant's exhibits to indicate that Claimant's Exhibit No. 1 was admitted into evidence.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises factual issues for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determinations that the claimant was not injured in the course and scope of her employment on _____, and that the carrier is relieved of liability because the claimant did not timely report the injury to her employer not later than 30 days after the claimed injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge