

APPEAL NO. 990852

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 25, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the course and scope of employment on _____, and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury on _____, and had disability from November 5, 1997, through December 29, 1997, and from January 15, 1998, through April 1, 1998. The appellant (carrier) appeals, urging that the hearing officer's decision is against the great weight and preponderance of the evidence and not supported by the evidence. The claimant responds that sufficient evidence supports the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The claimant testified that she sustained a back injury on _____, when she slipped and fell as she left the restroom. The claimant testified that the employer had two restrooms available for employees: a public restroom which was available only during the week, and a restroom restricted to employees located in a video conferencing room that was available with a key. According to the claimant, she was returning from the restricted restroom, the carpet was being cleaned, the floor was wet, and she slipped and fell. The claimant admitted that she had previously stated to an investigator for the carrier on November 6, 1997, that she was returning from the public restroom when she slipped and fell. The claimant testified that she reported the injury to the employer immediately after it happened.

According to the claimant, she continued working after the injury. The claimant testified that she sought medical treatment from Dr. P on November 12, 1997, and he took her off work. Dr. P diagnosed the claimant with lumbar acute severe discitis/neuritis, cervical and thoracic acute severe sprain/strain, and acute severe spasm cervical, thoracic and lumbar regions. The claimant testified that Dr. P released her to return to light-duty work on December 29, 1997, at her insistence. The claimant stated that she returned to work for a couple of days, but she was unable to do the work because of her injury, and Dr. P took her off work again in January 1997. According to the claimant, Dr. P released her to light-duty work on February 20, 1998, she was not certain if she returned to work for employer, and she started looking for light-duty work. The claimant testified that in April 1998 she found a job which was within her restrictions.

The claimant testified that she had been involved in a motor vehicle accident (MVA) in May 1997, but that the injury was mainly to her neck, although she received some treatment for her low back. According to the claimant, she received treatment for the MVA injuries from May 9, 1997, through June 23, 1997, and had recovered from those injuries prior to slipping and falling on _____. The claimant also testified that she had suffered

a physical attack on October 1, 1997, but did not have any back pain or migraines as a result.

The carrier presented the testimony of Ms. H and Mr. B to support its position that the claimant did not sustain an injury on _____. Ms. H, the property manager for employer, testified that the public restroom that the claimant initially alleged she was exiting was not accessible to anyone in the building on the weekend. Ms. H testified that she spoke with the cleaning crew working that day, they did mop the tile, not clean the carpet, and they did not see or hear anyone fall. Mr. B testified that he is the branch manager for employer and he worked with the claimant. According to Mr. B, the claimant complained of her back hurting prior to _____.

The claimant had the burden to prove that she injured her back on _____, and had disability. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer determined that the claimant sustained a compensable low back injury on _____. Whether the claimant sustained an injury on _____, was a question of fact for the hearing officer to decide. The carrier asserts that the claimant's physical problems were the result of prior incidents. To defeat a claim of injury due to a prior injury the burden is on the carrier to establish that the prior injury is the sole cause of the claimant's condition. Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). While the claimant was inconsistent in describing the particular restroom she exited prior to slipping and falling, the hearing officer found the claimant credible in her testimony that she slipped and fell at work injuring her cervical, thoracic, and lumbar spine. The hearing officer also found that the _____, fall was a producing cause of the claimant's condition. The medical records support the claimant's testimony that she sustained a back injury on _____. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. 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). We find the evidence sufficient to support the hearing officer's determination that the claimant sustained a compensable injury on _____.

Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Whether disability exists is also a question of fact for the hearing officer to decide and can be established by the testimony of the claimant if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer believed the testimony of the claimant, which was supported by the medical records of Dr. P. We find there was sufficient evidence to support the determination of the hearing officer that the claimant had disability from November 5, 1997, through December 29, 1997, and from January 15, 1998, through April 1, 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