

APPEAL NO. 990861

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 30, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on or about _____, and whether she had disability. The hearing officer determined that the claimant did not sustain a compensable injury on or about _____, and did not have disability. The claimant appeals and states her disagreement with several of the hearing officer's findings of fact and conclusions of law, pointing to evidence at the hearing which she feels supports her position that she sustained a compensable injury and had disability. She also complains that several of her exhibits were improperly excluded. The respondent (carrier) urges that there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer and that the evidentiary rulings were correct.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth fairly and adequately the evidence in the case and is adopted for purposes of this review. Briefly, the claimant, the activities director at an adult day care center, testified that on _____, she stepped on a plastic chain and fell to the floor, landing on her right buttock and right hand. She rested for a few minutes and continued working that day and on up to Thanksgiving, although she states she was out some days because of the claimed injury she sustained on _____. She did not see any doctor for her claimed injury until December 15, 1998, although she testified, and her testimony is corroborated by other evidence, that she attempted to get an appointment several months earlier but could not get information about insurance coverage and that it took a long time to get an appointment. Medical records in evidence show that the claimant was seen at a hospital on October 20, 1998, with complaints of abdominal pain/cramps/diarrhea but nothing concerning an injury. Claimant stated that she was at the hospital only for that condition, not for her injury, and that is why she did not mention her injury. In any event, she saw Dr. G on December 15, 1998, and he listed impressions of cervical radiculopathy, MCP dorsal capsular injury, carpal tunnel right wrist, and lumbosacral radiculopathy, HNP L4-5. He subsequently opined that it was a new injury. Medical records in evidence also show that the claimant sustained an injury in a prior job in 1996 (she started work with the current employer in December 1997) and that the diagnosis included degenerative disc disease in the cervical and lumbar areas, impressions of cervical and lumbar radiculopathy, and herniated discs at two locations.

The claimant testified that, although she continued working, she was not able to perform as she did before _____. She claims she was off work some days because of her injury; however, time sheets from personnel records indicate that the claimant did not miss time from work and that she actually worked more hours after _____ than before _____. The president of the employer testified that, although he was aware that the

claimant reported the incident with the plastic chain, he asked if she needed to seek medical attention and the claimant stated she thought she would be alright. A report of the injury was not made until October 1998 when Dr. G's office contacted the employer about insurance as the claimant had made an appointment to see Dr. G. The president also indicated that the claimant and he did not see eye to eye on a couple of programs around the Thanksgiving time frame and that the claimant decided to quit.

Initially, after objection by the carrier as to untimely exchange of two statements that the carrier had not seen before the CCH and another unsigned typed statement, the hearing officer did not admit the statements. We have reviewed the record and conclude that there was no abuse of discretion in the exclusion of the untimely exchanged and unsigned statements and no prejudicial error. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer found that the claimant did not sustain any physical harm to her body in a slip-and-fall incident at work on _____, and concluded that she did not sustain a compensable injury and did not have disability. While there was conflict in the evidence and testimony offered by the parties, it was the hearing officer's responsibility to resolve such conflicts and arrive at findings of fact. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Sections 410.165(a) and 410.168(a). It is apparent that the hearing officer did not find the claimant's testimony persuasive in proving an injury on _____, and concluded that a compensable injury had not been proven and, thus, no disability as defined in Section 401.011(16) had been sustained. The hearing officer was not required to accept the claimant's testimony at

face value and could believe all, part, or none of the testimony of any given witness. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). We have reviewed the evidence and cannot conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, our standard of review. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Accordingly, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge