APPEAL NO. 991039

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 April 22, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on January 8, 1999, and whether she had disability. The hearing officer found that the claimant injured "at least her lower back and hip" in the course and scope of her employment on January 8, 1999, and that she had disability from January 9, 1999, through the date of the hearing. The appellant (carrier) appeals, urging that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The carrier also urges that the finding set out above is inappropriate under the evidence and posture of the case. The claimant responds that there is sufficient evidence to support the decision and asks that it be affirmed.

DECISION

Concluding there is no prejudicial error requiring reversal and evidence to support the decision on the issues as stated, we affirm, with modification.

The claimant, a special education school bus driver, claims that she injured her lower back and right knee (through aggravation, as it had been previously injured) when she tripped on a rug and fell on January 8, 1998. There was a statement from a supervisor who did not witness the fall but saw the claimant on the floor after the fall, and when she asked the claimant if she was hurt told her that she thought she had hurt her arm. The claimant, who seemed nervous, asked the supervisor to come to the back office with her as she had something to tell her. The claimant told her about leaving a student on the bus and later that day went to an emergency room. She was diagnosed with myofacial strain lumbar back, contusion right hip, and right knee strain/sprain. She was prescribed medication and rest and was released with instructions for a follow up. She did not see a doctor again until four weeks later, and after she had been terminated from her employment, when she saw (Dr. M). His first medical report show complaints of falling and injuring lower back and right knee and note in past medical history "no previous injuries to injured areas." She testified that there had been only a little improvement in her condition and the pain she experiences from her injury and that she was taken off work by Dr. M and had been treated conservatively.

The carrier introduced medical records that show the claimant sustained a non-duty related right knee injury including an impression of a tear of the medial meniscus and chronic tear of the anterior cruciate ligament in l998. The carrier also pointed out that the initial medical records from Dr. M do not indicate the prior knee injury and that the claimant did not start treating with Dr. M for the asserted injuries until some four weeks later and after she had been terminated. The carrier also introduced evidence that the claimant had previously left a child on a bus all day was under threat of termination if it happened again. The claimant acknowledged that the day before her injury she again had left a child on the bus all day and that she was going to tell higher level supervisor, (Ms R), about it at the

time of the fall and acknowledged that after the fall and when she was telling Ms. R, she did not mention anything about her injury. Also in evidence was a letter the claimant had written in December 1998 complaining of the hostility in the work group.
The carrier urged that the evidence pointed to nothing more than a spite claim.

The hearing officer found that the claimant "injured at least her lower back and hip in the ocurse and scope of her employment on January 8, 1999." Aside from urging that there is insufficient evidence to support a finding of injury, the carrier complains that the finding is inappropriate under the posture of the case. Initially, we note that the claimant and her attorney only claimed a lower back and right knee injury throught out the case. While there was a notation in the emergency room record of hip contusion, this was not a part of any injury claimed. Under the circumstances, we modify this finding to exclude the words "and hip." We also agree with the carrier's concern over that part of the finding that claimant "injured at least ...." Clearly, the significant issue regarding injury was the claimant's right knee and the circumstance that there was a prior injury to the right knee. There is no finding on that part of the issue and the wording of the finding leaves open the distinct possibility of further litigation on the right knee, whether it was a part of the compensable injury of Janaruy 8, 1999, and other collateral matters. That unfortunate is a matter of fact finding for the hearing officer who is specifically responsible for making findings of fact based on the evidence. Section 410.165(a) and 410.168(a). However, given the issue framed as "[d]id the Claimant sustain a compensable injury on January 8, 1999" and the finding, as modified, that the claimant sustain "a least" a lower back injury, we can and will affirm the determination that the claimant sustained a compensable injury on January 8, 1999, if there is sufficient evidence to support the determination. Clearly, the evidence was in conflict, and just as clearly, a different inference than that found most reasonable by the hearing officer finds support in the evidence. However, that it not a sound basis to reverse. Salazar, *et al.* V. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. And, of course, resolving conflicts in the evidence is a responsibility of the fact finding hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It is apparent that the hearing officer found the claimant to be credible and believed her testimony regarding the incident of January 8, 1998, and the resulting injury "at least" to her lower back, and that she suffered disability beginning January 9, 1999, from the injury. He could believe her testimony over other evidence. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex Civ. App.-Amarillo 1973, no writ). There is some medical support for the injury asserted, and disability although a contrary view was also possible regarding a compensable injury and which could affect disability. Nonetheless, we have reviewed all the evidence of record and cannot concluded that the determination of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or 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). Accordingly, as modified, we affirm the decision and order that the claimant

sustained a compensable injury on Janury 8, 1999, and had disability from January 9, 1999, to the date of the hearing.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Phillip F. O'Neill

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Thomas A. Knapp
Appeals Judge