APPEAL NO. 991310

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 7, 1999, a contested case hearing was held. The issues concerned whether the appellant, who is the claimant, sustained a compensable injury on _____, the extent of such injury, and the existence of disability as a result.

The hearing officer found that the claimant was not credible, and, accordingly, that she had not proven through the preponderance of credible evidence that she sustained an injury as a result of slipping briefly, but not falling, on the floor at work. The hearing officer found that she was unable to work due to back pain beginning on December 21, 1998, but because it was not related to the occurrence at work, she did not have "disability," as defined by the 1989 Act.

The claimant has appealed and argues that the respondent/cross-appellant's (carrier) witnesses were not truthful, and she was hurt as she alleged. She argues that she had medical documentation to prove she was diagnosed with a lumbar strain. The carrier responds that the hearing officer correctly assessed that claimant's account of the injury was not credible. The carrier has also appealed the fact finding that claimant had any inability to work, arguing that such testimony was no more credible than her account of the accident in chief. There is no response to this appeal.

DECISION

Affirmed.

The claimant was employed on line service in a restaurant operated by (employer). The claimant rather vividly testified that on _____, while walking in the back room in the restaurant, she slipped and fell forward in some water. According to claimant, she tried to block her fall with her left arm, and her right knee likewise hit the floor, but in spite of these two extremities hitting first, she fell flat on her face, with her face and both shoulders striking the floor. The claimant estimated she was unconscious for nearly two minutes. When she came to, Mr. W, her supervisor, was standing near her. He had made no move to help her or assist her up, nor did he inquire about how she was feeling. The claimant went out to the lobby and was talking to a customer while she waited for the store manager, Mr. G to pass by. When he did, she reported her injury, but Mr. G said that he had no forms to report the injury and did not offer any medical treatment, although he did tell her she could go home. Claimant said the accident happened around 5:00 p.m., while she was working late at the employer's request. She said that the fall left the right side of her clothing wet.

The claimant sought medical treatment from the hospital on December 22, 1998, stayed overnight, and was referred to (clinic). Claimant said she did not seek treatment earlier because she did not believe this would be serious.

Mr. W testified that he saw the accident happen, although he differed considerably with the claimant in the mechanics of the occurrence. Mr. W was standing 10 feet from the claimant when she slipped somewhat in some moisture on the floor, but she caught herself. Mr. W said that claimant began cursing about the water on the floor, but when she asserted that she had slipped and fallen, he challenged her on the spot, telling her she did not fall. He said she cursed some more. Mr. W said that he was the first one to report the incident to Mr. G, and warned him that claimant might say she had actually fallen but had not.

Mr. G agreed that Mr. W first reported the incident, and that claimant subsequently came to him and said she slipped but told him she was not hurt and declined two offers of medical treatment. He allowed her to go home. Mr. G said that claimant clocked out at 2:15 p.m. that day, which meant that she slipped a few minutes before that. Mr. G said he promptly completed a notice of injury on that day.

Another supervisor, Ms. F, said that claimant, with whom she had worked three weeks, was an employee that it was hard to give direction, especially direction coming from Ms. F. Ms. F said that claimant told her she had slipped but was not injured. She said that claimant reported two days later that she was injured.

Claimant said that a light-duty release that the hospital gave her never became "official." She said it was not official because the employer did not offer her a light-duty position. However, further testimony developed the fact that she had never given her employer a copy of the light-duty release. Claimant asserted that she had not been released by her current doctor and he never discussed with her whether she could return to work. The claimant's self-assessment was that because of her back pain, which ranged from an eight to a 10 on a "10 scale," precluded most activity. Her treatment consisted of a TENS unit.

The hospital record from December 22, 1998, indicates that claimant slipped on some water and contended she had hand and low back pain. She was seen and discharged in the early morning hours of December 23, 1998. The diagnosis was acute lumbar and abdominal wall muscle strain. Examination found no tenderness in her back, and some tenderness to the left side of her navel. The hospital gave her a light-duty release precluding lifting or pushing over five pounds, and kneeling and squatting. She was seen at the clinic the day of discharge from the hospital. There, Dr. F noted that her physical exam was somewhat inconsistent with the mechanism of injury, which they understood involved a slip, with no fall, at work. Dr. F recommended a four-hour-a-day work schedule, and noted that Mr. G approved this over the telephone.

On January 8, 1999, Dr. SF, D.C., listed a number of lumbar and cervical diagnoses and pain that was described as constant and severe. He said that she related falling on her stomach. He recommended that she be off work pending further evaluation and objective testing. Claimant's current treating doctor, Dr. G, D.C., filed an Initial Medical Report (TWCC-61) on March 29, 1999, which diagnosed additional conditions including left wrist

trauma, bilateral shoulder myofascitis, and thoracic myofascitis. His understanding of the history of the accident, in an April 20, 1999, letter, was that the claimant slipped and fell on her back, and, given this mechanism of injury, he found it entirely plausible that claimant sustained all the injuries in this fall.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). We will not reverse the fact determinations of a hearing officer unless they are against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. We cannot agree that this is the case here, and affirm the hearing officer's decision and order on all appealed issues as supported sufficiently in the record.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge