APPEAL NO. 991367

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 June 4, 1999. She (hearing officer) determined that the respondent (claimant) sustained a compensable back injury on _____, and that he had resulting disability from November 24, 1997, through the date of the CCH. The appellant (carrier) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The claimant's response urges affirmance.

DECISION

Affirmed.

The claimant worked as a cook. He testified that on _____, he slipped while walking from the dish room to the work station and fell all the way to the floor, landing on his lower back. There were apparently no witnesses to the fall. The claimant continued working and did not realize he was hurt. The next morning, he said, he awoke with back spasms and leg problems. He had been diagnosed with diabetes within the previous year and thought the pain may have been related to that disease.

The claimant first sought medical care at an emergency room, but these records do not reference a fall. He then saw Dr. L on December 4, 1997, with complaints of low back pain and numbness in the legs. He said he did not recall whether he mentioned the fall to Dr. L, but the records for this visit make no reference to a fall. The claimant underwent an MRI on December 17, 1997, which showed lumbar herniation. Dr. L apparently referred the claimant to Dr. B. The claimant saw Dr. B on December 22, 1997. The records of this visit refer to back pain for about a month, but do not mention a fall. According to the claimant, he first realized that he hurt his back in the fall at work when Dr. B gave him the results of the MRI. The claimant has not worked since the incident. A memorandum of the employer states that the claimant called the employer on December 23, 1997, and left a message that "I have been out because I can't walk. I thought it was because I was having a reaction to my insulin . . . but I found out through my MRI that it is not my diabetes, that it is something when I slipped at work one day, I didn't fall, I caught myself before I fell but by me slipping and my reaction to the slip coming out of the dish room one day." In an undated letter, Dr. L wrote that the claimant did tell him he fell at work. Dr. L at first considered his condition to be diabetic neuropathy and for this reason did not submit the paperwork that reflected a work-related injury. The claimant was involved in a motor vehicle accident (MVA) on March 31, 1998, which also resulted in severe, low back radiating pain.

The claimant had the burden of proving that he sustained a work-related injury as claimed. Johnson v. Employers Reinsurance Corporation , 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question in fact and, in this case, could be proved by the testimony of the claimant alone if found credible by the hearing

officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer commented that the claimant's credibility "played a major role in sorting the facts of this case." She found the claimant credible in his assertion that he sustained an injury when he fell on _____. In its appeal, the carrier points to evidence it believes contradicts the position of the claimant. In doing so, the carrier primarily stresses the lack of a reference to a fall in the early treatment records, the claimant's initial statement that he had not fallen, but only slipped, and the later MVA. To the extent that the carrier was raising a sole-cause defense, it had the burden of proof. The claimant's only burden was to prove that the accident at work was a producing cause of the injury. Texas Workers' Compensation Commission Appeal No. 950800, decided June 30, 1995. The other points raised by the carrier obviously go to the credibility of the claimant. The hearing officer considered this evidence and determined that the claimant was credible and that he established a compensable injury. 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the claimant for that of the hearing officer, but find the claimant's testimony sufficient to support the finding of a compensable injury.

The carrier appeals the finding of disability to the extent that it argues there was no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge