

APPEAL NO. 991590

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 7, 1999. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_. The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The text of the claimant's appeal is "I am not in agreements [sic] with the decision." We consider this to be an appeal of the sufficiency of the evidence to support the decision and order of the hearing officer. Texas Workers' Compensation Commission Appeal No. 92292, decided August 18, 1992.

The facts of this case are fully set out in the decision and order and need only be briefly restated here. The claimant worked in a county tax office. She testified that on the morning of \_\_\_\_\_, her immediate supervisor, Ms. M, approached her with a task. The claimant said she told Ms. M that she would "try my best" to help. According to the claimant, she was, in effect, told she would do the task and Ms. M escalated the situation to a verbal confrontation and then struck or pushed the claimant on the right shoulder. Introduced into evidence were photographs of the claimant which appear to show a bruise or contusion on the top of her right shoulder. Diagnoses included a contusion and cervical sprain with neuritis related to "illness." The claimant's sister, who also worked in the same office, testified that she was present and, though her view was partially blocked by a pillar, saw Ms. M's hand strike the claimant on the shoulder. The claimant's cousin, who also worked in the same office, testified that she observed a verbal confrontation, but never saw Ms. M strike the claimant. The cousin said her desk was about six feet from the claimant's desk. She further testified that she was "totally focused" on the situation and had a clear view of Ms. M. Ms. M testified that the claimant refused to do the task assigned her and denied ever striking her or making physical contact with the claimant. The elected county tax assessor-collector testified that the claimant had problems dealing with authority. He considered Ms. M to be "very poised and professional." He had not a "shadow of a doubt" that Ms. M did not strike the claimant. Other evidence was essentially nonprobative on the issue in dispute.

The claimant had the burden of proof that she sustained a compensable injury as alleged. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide and could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The evidence in this case was in dramatic conflict. The hearing officer noted in his decision and order that

the issue in this case "comes down to the credibility of the witnesses." He considered the evidence and concluded that the claimant's "version of the events is simply not believable."

Rather, he found the cousin's testimony that Ms. M did not strike the claimant to be "the best description of the events on that date." The hearing officer as fact finder is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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 respective witnesses for that of the hearing officer, but rather find the testimony of Ms. M and the claimant's cousin, deemed credible and persuasive by the hearing officer, sufficient to support his determination that the claimant did not sustain a compensable injury as claimed.

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

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge