

APPEAL NO. 991613

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 July 2, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and if so, whether she had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and thus did not have disability. The claimant appeals, urging that the decision of the hearing officer was so against the great weight and preponderance of the evidence as to be manifestly unjust and that any inconsistency in claimant's testimony cited by the hearing officer was irrelevant. The respondent (carrier) urges that there is sufficient evidence to support the determinations of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The hearing officer sets forth in unusual detail the evidence in this case and it will only be briefly summarized here. The claimant testified that she injured herself in lifting one of three heavy bins on _____, when she felt a "pop" in her wrist. She denied that anyone lifted the bins for her although carrier offered an affidavit of a male coworker indicating that he had lifted bins for the claimant. Initially, the claimant stated that the coworker did not work on _____, but acknowledged that time cards indicated that he did. In any event, the claimant stated her wrist did not bother her particularly and that she continued to work her shift and did not report the injury to anyone. She stated her wrist hurt her the next day but that she went to work and had assistance from others. She denied that she had a meeting that day, Day after injury, with the manager, Ms. L, contrary to the testimony of Ms. L that a meeting had taken place with the claimant concerning her attitude and abusive language toward an assistant manager and calling higher headquarters about personnel matters. In any event, the claimant acknowledged that she was a disgruntled employee over not being interviewed for a management position sometime earlier. Claimant testified that on (Day after injury), she told an assistant manager, JY, that she had injured her wrist the day before, requested to see a doctor, and that JY contacted Ms. L.

An affidavit from JY states that the claimant never reported an on-the-job injury to him on either the _____ or _____ of _____, and that about a week before _____, the claimant had asked about the procedures for reporting an injury and filing a workers' compensation claim. Ms. L testified about the Day after injury, meeting with the claimant, stated that the claimant did not mention any injury, did not appear to be limited in her motion or give any indication of being in any pain, and that she appeared to be normal in performing her job.

The claimant went to an emergency room on February 11, 1999, and called Ms. L, the first that Ms. L claimed to be aware of any injury. Claimant was diagnosed with a wrist sprain. Subsequently, the claimant was apparently referred to a chiropractor, Dr. L by her

attorney who diagnosed her condition as carpal tunnel syndrome (CTS), wrist sprain/strain, DeQuervain's tenosynovitis, and myofascial pain syndrome; he treated the claimant, and took her off work. A carrier-selected doctor, Dr. F, subsequently saw the claimant, discounted any CTS, and indicated that treatment had not been appropriate for her condition (sprained wrist and DeQuervain's syndrome) and had perpetuated dysfunction and discomfort.

The hearing officer, who heard and observed the claimant through her testimony at the CCH, indicated that he did not find her to be a credible witness, at least insofar as establishing a compensable injury and disability. Clearly there was conflict in the evidence before him with the claimant giving her version which was at odds with other testimony and evidence. Too, the hearing officer felt there were some inconsistencies, although appearing not to be of particularly great consequence, in the claimant's description of the mechanics of the injury. In any event, it is the responsibility of the hearing officer to resolve conflicts and inconsistencies in the evidence and testimony. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 951043, decided August 7, 1995. The hearing officer was not obligated to accept the testimony of the claimant at face value and could believe all, part, or none of the testimony of any 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.). And, the fact that there is some evidence to support inferences different from the inference found most reasonable by the hearing officer is not a sound or sufficient basis to set aside his findings and decision. 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. Only were we to conclude, which

we do not from our review of the record and evidence, 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, would there be reason to reverse and render a new decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Without a compensable injury, there is no disability, as defined in Section 401.011(16). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge