

APPEAL NO. 991683

On July 16, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether respondent (claimant) sustained a compensable injury on _____; and (2) whether claimant has had disability. Appellant (self-insured) requests that the hearing officer's decision that claimant sustained a compensable injury on _____, and that claimant had disability from January 11, 1999, until January 27, 1999, be reversed and that a decision be rendered in its favor on those issues. No response was received from claimant.

DECISION

Affirmed.

Claimant is a school bus driver for the self-insured. On _____, the bus that was parked several feet in front of the parked bus that claimant was sitting in backed into the front end of claimant's bus at a low rate of speed. Claimant said that she had neck and upper shoulder pain as a result of that accident and she went to Dr. S, D.C., for treatment. Dr. S testified that the low-impact collision of _____ caused claimant to have a cervical sprain/strain, that he treated claimant for that injury, and that he took claimant off work for two weeks for that injury. Claimant said Dr. S had her off work for her injury of _____ from January 11 until January 27, 1999, when she returned to work. Officer RH, who investigated the accident, testified that, in his opinion, the accident would not have caused an injury.

Claimant had the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant also had the burden to prove that she sustained disability as defined by Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The hearing officer determined that on _____, claimant sustained a compensable injury and that she had disability from January 11 until January 27, 1999. Carrier contends that the evidence does not support the hearing officer's decision. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge