APPEAL NO. 991688

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 21, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on or about _____, and that she did not have disability within the meaning of the 1989 Act. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that she works for a temporary company and is assigned to work in a customer service position with a long-distance telephone company (client company). She stated that she takes over 100 telephone calls per day, that she uses a headset, that she types on a computer, and that she is required to twist from side to side to retrieve forms she needs to do her job. She testified that on _____, she was sitting at her desk and she developed back pain and tingling in her left leg. She stated that as far as she knows, she was just sitting at her desk when the injury occurred. The claimant testified that she first sought medical care for her back on February 21, 1999, with Dr. H, a chiropractor. She stated that she also sought treatment with Dr. S, because he could prescribe pain medication. The claimant testified that both Dr. H and Dr. S had told her that she has a "slipped" disc in her back and that it was caused by repetitive movement at work and sitting.

At her initial appointment with Dr. H, the claimant completed an intake form, in which she stated that her major complaint was "my leg and hip hurt. I was walk[ing] on tread mill the next thing I know I couldn't walk, without a lot of pain, can't sleep or move leg without it hurt [sic]." That form also asked if the major complaint was related to a fall or accident and the claimant responded that she had been walking on the treadmill for about an hour when she noticed the pain. On cross-examination, the claimant testified that she had gone to the health club to walk on the treadmill after she had pain in her back and leg at work, thinking that she was having leg cramps that she could work out by walking. In an undated report concerning the _____, injury, Dr. H stated:

> Per your request, please find this letter regarding your two visits to this clinic.
>
> You had stated during your initial visit that you did not recall the exact causation of this above dated injury. At that time you were describing a significant amount of pain to the lower back, left hip, and left leg pain.
>
> It is my understanding that you have given more thought to this injury and have since remembered that this injury was tied to an event at your work.

> It is my opinion that this is entirely possible, with your occupation at [client company], which has required prolonged sitting with twisting type movements. It is my further understanding that you had reported the initial complaint of back pain to your Supervisor with [client company].

Ms. P testified that she is a supervisor with the client company. Ms. P stated that one day in February 1999, she saw the claimant walking funny at work and that several days later the claimant began missing time from work. Ms. P testified that she did not know the reasons for the claimant's missing time from work and that she did not learn that the claimant was alleging a work-related injury until much later. Ms. C, another supervisor with the client company, stated that in February 1999, she noticed the claimant having difficulty walking. Ms. C testified that she asked the claimant what was wrong and the claimant responded that she did not know what had caused her problems. Ms. C maintained that she could not recall the claimant's ever having told her that she had injured her back at work.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable injury. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the claimant injured her low back due to repetitive motion at work. The hearing officer specifically stated that the claimant's "allegations of a work injury are not supported by sufficient evidence." The hearing officer was acting within his province as the fact finder in deciding to reject the claimant's evidence. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co.,15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant

did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge