APPEAL NO. 991814

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 9, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, urging that the hearing officer erred in relying solely on the employer's testimony and not on the facts and the medical evidence. The respondent (self-insured) replies that there is sufficient evidence to support the hearing officer's decision and it should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, while working as a delicatessen clerk in employer's grocery store, she slipped and fell in grease that had backed up onto the floor from a drain. The claimant said that she injured her low back, head and right shoulder. The claimant was taken to the emergency room by ambulance and released to return to work light duty on November 17, 1998. According to the claimant, she tried to work light duty but could not, and she sought treatment with Dr. M on November 17, 1998. Dr. M diagnosed the claimant with cervical strain, thoracic strain, lumbar strain, posttraumatic cephalalgia, right shoulder strain, right clavical contusion, and right hip strain. Dr. M took the claimant off work, recommended physical therapy, and performed diagnostic testing. An MRI on January 5, 1999, of the lumbar spine indicates bulging at the L5-S1 level, but no focal herniation of the nucleus pulposus. On March 1, 1999, Dr. M released the claimant to return to light-duty work. The claimant testified that she returned to light-duty work on March 1, 1999, and asserted disability from November 17, 1998, through March 1, 1999. On cross-examination, the claimant testified that she had not requested time off from work prior to the injury, and had never said that she was going to fall on purpose to get even with employer.

The self-insured presented the testimony of Ms. W, Mr. G, and written statements from coworkers to support its position that the claimant did not sustain a compensable injury on _____. Ms. W, the claimant's supervisor, testified that the claimant asked for time off work in October and it was denied, that the claimant would have had to walk across the drain when she started work, and that she had never seen a drainage problem in that particular drain. Mr. G, the produce manager, testified that he was at the accident site within three minutes and saw the claimant lying on the floor with grease. Mr. G testified that the grease looked like old grease from a grease barrel, and he helped clean it up. Mr. G said that he washed the grease down the drain with water and that, if the drain was overflowing, it would have backed up in another part of the store. (Ms. G), a coworker, in a recorded statement, states that the claimant said she was going to fall on purpose so that she could sue the company.

The claimant had the burden to prove that she injured herself as claimed on _____. 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. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer resolved contradictions in the evidence against the claimant and concluded that claimant did not meet her burden of proving she sustained a compensable injury. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

_____
Dorian E. Ramirez
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge