

APPEAL NO. 991869

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 22, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to her low back, neck, left shoulder, and left leg on \_\_\_\_\_, and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury to her low back, neck, left shoulder, or left leg on \_\_\_\_\_, and the claimant did not have disability. The claimant appeals, urging that several findings and the conclusions of the hearing officer are not supported by sufficient evidence, and are against the great weight and preponderance of the evidence. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant was employed as an inspector of pants and her job duties were to place the pants on a board, inspect all seams, zippers and buttons for defects, and remove excess threads. The claimant testified that on Thursday, \_\_\_\_\_, she had a bad headache from the vapors in the ironing area, and as she lifted a pair of pants onto the board, she heard her back pop and she felt pain in her back, left shoulder, upper body and left leg, and she lost strength in her left leg. The claimant testified that she felt sick that weekend with a terrible headache and when asked if the headache was from the vapors or from her back popping, the claimant said "[W]hen I got sick at work, all my nerves, all my back like collapsed and I think that triggered my headache." On July 13, 1998, the claimant called in sick to the employer, and sought medical treatment with Dr. Y. The claimant said that she told Dr. Y that she was injured at work and Dr. Y told her that he could not see her through workers' compensation, so she used her private health insurance. Dr. Y took the claimant off work and recommended physical therapy. According to the claimant, Dr. Y's office was not responsive to her telephone calls, and she began treating with Dr. C in August 1998. It was the claimant's position that she sustained a specific injury on \_\_\_\_\_, and had disability from July 10, 1998, through the date of the CCH.

Dr. Y's Initial Medical Report (TWCC-61) reflects the claimant's history as "lifting heavy stacks of clothing and felt cervical and lumbar pain and headaches." Dr. Y's notes indicate that the claimant complained of neck pain of two days' duration, and she thought she had injured her neck at work, but denied any trauma. Dr. Y's diagnosis was cervicgia, lumbago, low back pain, and tension headache. Dr. C diagnosed the claimant with cervical/brachial syndrome, lumbar sprain/strain, radiculitis (lumbar), rotator cuff syndrome, and shoulder tendonitis, and took her off work. In pertinent part, Dr. C noted the mechanism of injury:

She states she had to quickly insert pants onto a board and somehow flip the board back and forth. She also states that at her last job site, she was placed near a hot gas releasing hose. She states the vapors were strong, so strong that it progressively made her feel nauseated [sic], have constant headaches with dizziness and all over physical weakness. She states she was working hard on \_\_\_\_\_ by pushing and pulling on pants in and out of a board. She states she last recalls leaning and reaching over to her side to pull out a pair [of] pants out of the board when her body suddenly gave out. She states she some how [sic] lost her balance for a few seconds causing her body to fall in a twisting motion. She states she was lucky enough to some how [sic] catch herself with her left arm onto the board where she was diligently [sic] working on. She states she suddenly felt an uncomfortable pain in her low back with radiating pain down her left leg.

The claimant completed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on August 13, 1998. The TWCC-41 states that the injury occurred "while at work there was a smell close to the machine that was causing headaches. She felt weak and her hip and leg and fumes caused faint and nausea."

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 claimant appeals several findings of fact which merely summarize the testimony of the claimant or the evidence, asserting that they are inaccurate; however, review of the record indicates that they are substantiated by the evidence. 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. The hearing officer found that the history and onset of symptoms described by the claimant to Dr. Y, Dr. C, in her responses to interrogatories, her TWCC-41, and at the CCH, were varied and inconsistent. 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.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge