APPEAL NO. 000213

On January 6, 2000, 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 hearing officer resolved the disputed issues by deciding that appellant (claimant) did not sustain a compensable injury to her low back and abdomen on _____, and that claimant has not had disability. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor on both issues. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

A cutting room appliance (CRA) machine moves on top of a long table spreading material onto the table and protrudes approximately eight inches on either side of the table. Claimant, who was working in quality control for employer on _____, testified that on _____, the protruding part of the CRA struck her in the back as it was spreading material on a spreading table and as she was walking between spreading tables, causing her pain in her back and abdomen, and that she grabbed the end of the table and did not fall down. She said that she was not pushing a cart when she was hit by the CRA. She testified that RE grabbed her arm and told her that the CRA was going to hit her and that is when it hit her. RE, who was working as a material inspector for employer on _____, testified that on that day claimant passed by him pushing a cart; that he saw the CRA heading toward claimant and told her to watch out; that he saw the CRA hit the cart but did not see it hit claimant; and that claimant straightened up the cart, proceeded on, and did not say the CRA hit her. RE said that he told RR, the operator of the CRA, that RR had struck the cart with the CRA and to be more careful. RE said he made no physical contact with claimant. RR testified that he did not see what happened but that he heard metal hitting metal, shut off the CRA, and saw claimant lifting the cart. He said that RE told him to be more careful because he had almost hit claimant. RR said claimant straightened the cart and proceeded on and he did not hear claimant complain about being hit or being injured.

Claimant reported her claimed injury to her supervisors on _____, and on June 14, 1999, employer sent her to Dr. G. Dr. G noted on June 14, 1999, that claimant told him that on _____, she was hit in the back by a moving machine that spreads cloth. Dr. G noted that claimant's back had a slight erythema (redness of the skin) and assessed claimant as having trauma to the back and abdominal pain. Claimant saw Dr. G several more times and he released claimant to modified duty on June 15, 1999, and to full duty with some restrictions on June 21, 1999. On June 28, 1999, he released claimant to full duty without restrictions. Dr. G noted on work status forms that the injury was work related. Claimant changed treating doctors to Dr. C, D.C., on July 12, 1999, and Dr. C noted that claimant told him that she was hit in the back by a large heavy machine on _____. Dr. C diagnosed claimant as having lumbar disc syndrome and noted that lumbar x-rays showed scoliosis and decreased disc space at L5-S1. Claimant has

continued to treat with Dr. C for complaints of low back pain. Dr. C noted on work status forms that claimant's injury is work related. He initially noted claimant could return to modified work but then noted that claimant is unable to work.

The hearing officer made findings of fact and concluded that claimant did not sustain a compensable injury to her low back and abdomen on _____, and that claimant did not sustain disability. Without a compensable injury, claimant would not have disability as defined by Section 401.011(16). Claimant had the burden to prove that she was injured in the course and scope of employment and that she had disability. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that claimant has an injury, but disbelieve claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.w.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Appeal No. 950084. 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. Appeal No. 950084. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are 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:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge