

APPEAL NO. 000294

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 January 18, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of her employment and that, because the claimant did not sustain a compensable injury, she did not have disability. Claimant appeals, urging that the decision of the hearing officer is against the great weight and preponderance of the evidence. Respondent (carrier) argues that there is sufficient evidence to support the decision of the hearing officer and asks for affirmance.

DECISION

Affirmed.

Claimant, who had serious preexisting knee conditions which required surgery in October 1998, testified that she sustained an injury to her knees on _____, when she fell forward out of a chair or while supporting herself on a chair as she was cleaning up some wax that had spilled earlier. On her next scheduled day to work, she reported to work and was immediately called into the office because of her unsatisfactory performance and was terminated. She applied for and received unemployment benefits. She did not seek medical attention until December 28, 1998, when she saw a Dr. R who reports a history of an injury occurring when the claimant fell out of a chair when hot wax landed on her. Dr. R notes that the claimant had arthroscopy on both knees in October 1998, and that she states "her knees still bother her some." A tentative diagnosis of contusion of the right knee and contusion of the right hip was made.

Reports from her previous doctor, Dr. H, including the operative reports on her knees, were in evidence. A report dated November 16, 1998, indicated on follow-up examination that claimant was gradually doing better, was still in therapy, had knee pain that streaks down her leg to the foot and that she was trying to get off crutches, noting that she was on crutches 3 to 4 years before the surgery. The claimant did not see Dr. H again but indicated he released her to work several weeks before the _____ incident. In a report dated March 4, 1999, Dr. H indicates that the claimant had a previous history of patellofemoral syndrome and that the current impression was patellofemoral contusions, re-exacerbation of preexisting condition, both knees. He indicates, "it does sound like this happened on the job while she was at work."

The hearing officer indicated that the claimant had given several different explanations of how she injured herself between her testimony and medical histories. It was apparent that in assessing her testimony, he did not find it convincing in proving a new injury being sustained on _____. The hearing officer is the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence. Section 410.165(a). He was not required to accept the claimants testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex.

Civ. App.-Amarillo 1980, no writ). Similarly, he has the responsibility to weigh and evaluate the medical evidence and to determine whether it sufficiently supports a new injury as opposed to a continuation of a prior condition or prior injury. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Texas Workers' Compensation Commission Appeal No. 93515, decided July 26, 1993. Clearly, the claimant had a serious preexisting knee condition and an inference could be drawn from the medical evidence that the claimant continued to experience the effects of that prior condition. Too, there were other factors that the hearing office could consider in weighing the evidence and arriving at inferences from the evidence. In addition to variations in the details of the evidence the hearing officer noted, the surrounding circumstances could be taken into consideration such as the indication that the claimant apparently returned to work at her next appointed time, that the only apparent reason she did not work was because of unsatisfactory duty performance that led to her termination, that she subsequently filed for unemployment benefits, that she did not seek medical attention until December 28, 1999, and that the initial medical report at the time also references a hip contusion. In sum, we cannot conclude from our review of the evidence that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge