APPEAL NO. 000429

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 8, 2000, a hearing was held. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on _____; that notice to employer was timely; and that claimant did not have disability. Claimant asserts that she is disabled "due to a fall"; claimant also refers to medical evidence of her condition and her pain; she attached documents to her appeal, some of which were admitted at the hearing and some were not. Respondent (carrier) replied that the decision should be sustained.

DECISION

We affirm.

Claimant included various documents with her appeal. The substantive medical documents provided were also admitted at the hearing and were considered on appeal. Some medical records, such as bills, had not been admitted; these along with additional factual statements made by claimant were not considered and did not meet the criteria for remanding the case for further consideration by the hearing officer. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Claimant worked for (employer) on _____. She testified that she sews the bands on hats. She also testified that wheeled hat racks capable of holding 12 hats are used to move hats between workers. She testified that on _____:

> I finished the twelve hats, and I pushed the rack. And the wheels of the rack, they were stuck. So I pushed the rack like that, and I felt like a pain here. [Later, claimant indicated with her hand that the pain was over her right hip, according to the hearing officer.]

Claimant also testified that she pushed the rack with her hand and when asked to describe the pain, she attached a number "10" to it. As stated at the beginning of this opinion, claimant on appeal now says that she is disabled "due to a fall"; there was no evidence of a fall at the hearing. However, the record of hearing also contains an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated August 18, 1999, signed by claimant, which says that on _____, she was "pulling on sewing machine and hat and felt low back pull and pop." It also contains a doctor's note, referred to hereafter, which says that she was pulling material from behind a sewing machine.

Claimant testified that when she tried to push the rack it was stuck because thread had become entwined in one or more of the four wheels that supported the rack. Claimant said that the pain went down her right leg, and she had never felt a pain like that before. That same day she told AR who translated for claimant to her supervisor. Claimant,

however, said that she did not mention the rack but only said that she told AR "about my pain." There was some testimony by claimant that the wheels were round when she was asked if they were ball-shaped or regular round wheels.

AR testified that claimant never told her that she hurt herself at work. On cross-examination, AR said "yes," she had seen claimant having problems with her right leg "before that day," adding, "what I see is that she can't walk real good because she was having problems with her leg." Ms. H testified that she is a supervisor above claimant; she said that when claimant was absent on June 2, 3, and 4, 1999, it was not because of her son's trouble with authorities–that that had occurred previously, but that claimant reported having been sick. (Claimant had testified that she was not sick right before _____, but had to be absent because of her son's trouble with authorities.)

Ms. A testified that she is the safety coordinator; she said that claimant was working on straw hats which are moved around the plant on newer racks that have "casters" that are "higher off the ground" adding, "we got those purposely from the ball bearing people because threads couldn't get around them." She said that it takes "three to four pounds of hand pressure to push it and pull them."

Claimant did have an MRI on June 16, 1999, which shows a "large disc herniation" at L4-5, causing compression of the thecal sac. However, claimant's initial medical note by Dr. G, on _____, said, "very severe pain around the right hip. . . . She says she has been having some difficulty sleeping and walking because of the pain." _____, was the date of the alleged injury so there would have not even been one night of sleeping after the injury, much less sufficient time to be "having some difficulty sleeping." Although claimant testified that her pain was a "10" when she pushed the hat rack, Dr. G's note says nothing of an injury or an injury at work. Dr. G's impression was "trochanteric bursitis"; he injected the area of pain. On June 9, 1999, Dr. G wrote that claimant returned "for follow-up on a painful area around the right hip. This patient is known to have a history of trochanteric bursitis. I saw her a couple of days ago and she was given an injection of depo-medrol into the bursa . . . ." Again, no history of an injury or injury at work was mentioned.

The hearing officer found that notice was timely given on July 7, 1999, by communication of Dr. A's chiropractic record to employer. Dr. A's note that provided notice (the notice determination was not appealed), also said that claimant has a work-related injury, adding, "she was pulling material from behind a sewing machine and she turned and felt a pop in her lower back."

There was medical evidence of an injury in addition to that of Dr. A. Dr. GR, who examined claimant for carrier in December 1999, said that claimant's degenerative disc disease predated the injury but that claimant does have an "acute lumbosacral strain as a result of this injury."

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He considered evidence that claimant pushed a hat rack injuring her back; he also considered evidence that claimant was pulling on a sewing machine when she injured her back; finally he considered that claimant was pulling material from behind a sewing machine when she injured her back. He could question the absence of any reference in the first medical records to an injury when claimant testified that she felt a "10" type pain at the time of injury and had never felt that before. He could give some weight to AR's testimony that claimant's right leg bothered her before _____. He could consider other conflicts in the evidence such as that by claimant that she was not at work just before _____, because of her son, while Ms. H said that claimant reported to her that she had been sick.

The hearing officer showed in a comment in his Statement of Evidence that he had considered these inconsistencies and conflicts; he said, "I found claimant not to be credible with respect to the injury." He then found that claimant did not sustain an injury at work; that determination is sufficiently supported by the evidence. He did not say and he did not find that claimant has no injury or has no abnormality in her back.

While claimant addresses disability in her appeal, there can be no disability under the 1989 Act unless there is a compensable injury. *See* Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge