

APPEAL NO. 000764

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 10, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury in the form of scratches, abrasions, and bruises on _____; that the injury did not include a right eye or a left knee injury; that claimant did not have disability; and that the respondent (self-insured) was not relieved of liability because of the horseplay, willful attempt to injure, or personal animosity defenses to liability provided in Section 406.032. The claimant appeals the determinations which limited the compensable injury to scratches, abrasions, and bruises and which found no disability, contending that these determinations are against the great weight and preponderance of the evidence. The self-insured replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, a registered nurse, was involved in a physical altercation with another registered nurse on _____. Apparently, both were terminated from their employment because of this incident. The altercation involved hitting, scratching, and hair-pulling. The other nurse testified that in the course of the scuffle, she did "drag" her hand across the claimant's face. The claimant testified to having sustained bruises to her leg. In a written statement, the claimant also said that she suffered "a throbbing headache with increasing intensity, an approximately 1-inch bloody scratch on the right side of my face, and redness at my tracheal areas due to her punching." Emergency room records reflect a chief complaint of headaches. The following Monday the claimant saw Dr. T, with complaints of "blurry vision." Dr. T observed several scratches on the claimant's left arm and one on her right cheek. The claimant then saw Dr. S for her eye condition. He diagnosed "macular pucker" and performed surgery on July 26, 1999. The claimant said she asked Dr. S if the headaches or altercation caused this condition and he said that he did not know. His medical records do not address causation. According to the claimant, about 25 years ago, a doctor told her she had a "little scar" in her eye and was advised to check it once a year because it could increase and require surgical treatment. She said she had her eyes examined every year and had no problems with it until Dr. S "removed the scar."

With regard to the claimed knee injury, the claimant testified that she heard a "click" in her left knee while walking late in July 1999. She said she "knew" her knee was "changed" after the incident and that she felt more tired. The first reference to the left knee in Dr. T's records occurs on August 2, 1999. This note reflects that the claimant heard a pop while walking the day before. In a report of August 26, 1999, Dr. T diagnosed a "trace effusion" and limitation of range of motion with possible meniscal tear later confirmed by MRI.

The claimant had the burden of proving she sustained a right eye and left knee injury as a result of the altercation at work on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so were questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer determined that the claimant "suffered minor injuries at most in the scuffle" (Finding of Fact No. 6) and that the left knee pop and scar on the right eye were unrelated to the scuffle directly or by virtue of aggravating a prior condition. In her appeal of these determinations, the claimant cites evidence in support of her position, primarily her own testimony, and argues that the "sequence of events" of the altercation and blurred vision shortly thereafter with surgery proved that she suffered an eye injury in the altercation. She also contends that she had no preexisting problems with her knee and that the trauma involved in the "kicking of her left leg" and possible other trauma to the leg caused the injury. We have observed in the past that chronology does not necessarily in itself establish causation. Texas Workers' Compensation Commission Appeal No. 92331, decided August 28, 1992. Given the lapse of time between the altercation, the onset of knee pain, and the prior history of a right eye condition, as well as the lack of medical evidence addressing causation, the hearing officer concluded that the claimant failed to meet her burden of proving that she sustained a right eye and left knee injury in the course and scope of her employment. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the injury determination of the hearing officer.

Whether disability existed also presented a factual question for resolution by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the claimant testified that she would have been able to continue working if she did not have her vision and left knee problems. Having affirmed the findings that the compensable injury did not include the right eye or left knee, we affirm the further determination of the hearing officer that the claimant did not have disability as a result of a compensable injury.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge