

APPEAL NO. 000782

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 21, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the course and scope of her employment on _____, and that she did not have disability because she did not sustain a compensable injury. The parties resolved an issue as to the claimant-s average weekly wage by stipulating that it is \$210.35. In her appeal, the claimant essentially argues that the hearing officer's determinations that she did not sustain a compensable injury on _____, and that she did not have disability are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant contends that on _____, she was working as a maintenance worker for (employer). She stated that when she lifted a trash can and twisted to empty it into a trash bin, she developed pain in her right knee. The claimant stated that her injury occurred shortly after she returned to work following her lunch break and that she was able to complete her shift but she continued to have pain and swelling in her right knee and was limping. The claimant testified that she sought medical treatment at the emergency room on November 12, 1999. Records from the emergency room reflect that the claimant complained of right knee pain. Those records further state that the pain began when she stood up at work and her "knee gave way." The claimant denied giving this history at the emergency room, insisting that she told the doctor at the emergency room that she had injured her knee twisting at work. The claimant next sought medical treatment on November 19, 1999, from Dr. T, whose notes reflect that the claimant could not recall how she had injured her knee at work and that she "doesn't recall twisting it although she thinks that may be what has happened."

Ms. T, employer's personnel manager, testified that she had a conversation with the claimant on November 15, 1999, and that the claimant told her at that time that her knee pain had developed when she stood up after her lunch break ended on _____. Ms. T denied that the claimant told her in the November 15th conversation about injuring her knee when she twisted to empty a trash can. Ms. T insisted that the claimant first told her about the alleged incident of injuring herself while emptying a trash can after she had an appointment with an orthopedic surgeon who, according to the claimant, had told her that she must have twisted her knee in some way.

The claimant has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. -Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and

credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain a compensable injury on _____. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the evidence presented by the claimant was sufficiently persuasive to satisfy her burden of proving that she injured her knee in the course and scope of her employment as she alleged. The hearing officer was acting within his province as the fact finder in deciding to reject the claimant's testimony that she injured her knee twisting to empty a trash can into a trash bin. In making his decision to discount the claimant's testimony, the hearing officer noted that the claimant did not give the history of injuring her knee when she twisted at work to the doctor in the emergency room, to Dr. T, or to Ms. T in the November 15, 1999, conversation. He was free to consider those perceived discrepancies in the history of the injury in making his credibility determinations. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Although another fact finder could have drawn different inferences from the evidence, which would have supported a different result, that does not provide us with a basis to reverse the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge