

APPEAL NO. 000786

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 March 10, 2000. The hearing officer determined that the appellant (claimant) did not suffer an injury in the course and scope of her employment and did not have disability. The claimant appeals the hearing officer=s decision, urging that her testimony was more consistent than that of her supervisor, Mr. C; that she deserves an objective hearing on her claim; and that the decision and order should reversed and remanded for another CCH to be held before another hearing officer. The appeals file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant cleaned offices for the employer at different job sites and worked 15 to 16 hours per week. The claimant testified that on _____, she tripped over a vacuum cord and fell towards a wall; her left knee popped; she went blank@for 20 to 25 minutes; and she woke up sitting on a couch. According to the claimant, nobody witnessed the incident, but 30 minutes later when she saw Mr. C she told him that she had tripped and that her knee, back, and neck were hurting. The claimant testified that Mr. C told her to complete an accident report; she finished her shift that day; and on December 1, 1999, she completed a n accident report and then worked her shift. According to the claimant, Mr. C wrote her up for poor performance on December 1, 1999, after she had reported the injury.

The claimant sought medical treatment with Dr. M on December 2, 1999. Dr. M diagnosed the claimant with acute sprain/strain of the cervical and lumbar spine; segmental dysfunction of the cervical, thoracic, and lumbar spine; and muscle spasm. The claimant testified that Dr. M took her off work on December 2, 1999, and released her to return to work on March 1, 2000.

The carrier presented the testimony of Mr. C and Ms. N. Mr. C testified that the claimant had told him that her leg was hurting prior to Thanksgiving and she declined to file an accident report; that the claimant told him on _____, that she was hurting and was going to write up an accident report because she was going to be fired anyway; and that the claimant had been written up for poor work performance prior to Thanksgiving. According to Mr. C, the claimant did not tell him, and he did not ask, how she was injured. Ms. N, claimant=s coworker, testified that the claimant told her that she should fake an injury because they would probably fire her after they fired the claimant.

The claimant had the burden to prove that she injured herself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact

for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He did not find the claimant's testimony credible and concluded that the claimant did not sustain an injury in the course and scope of employment on _____.

When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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). We find there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain an injury in the course and scope of her employment on _____.

We cannot conclude from an examination of the record that the hearing officer was biased against the claimant or that the claimant was not afforded an objective hearing. The claimant was not restrained from presenting her evidence in regard to the issues at the CCH. A hearing officer's weighing of the evidence so as to rule in favor of one party and against another is not, in and of itself, evidence of bias. The hearing officer was entitled to and required to decide what evidence he believed in this case.

The claimant appealed the hearing officer's finding of no disability. A Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge

