

APPEAL NO. 000916

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 April 5, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not have disability; and that the appellant/cross-respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer of the claimed injury. The carrier appealed Finding of Fact No. 4 that the claimant was unable to earn her preinjury wage due to the claimed injury, contending that the evidence did not establish any injury. The appeals file contains no response to the carrier's appeal. The claimant appealed the adverse findings, contending that they are against the great weight and preponderance of the evidence. The carrier replied that, with the exception of Finding of Fact No. 4, the decision is correct, supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked at a candy manufacturing company. She testified that on _____, she had to obtain some folded boxes from the warehouse and that as she was pushing the cart where she placed them, the boxes fell on her left side and back. She said she worked the remainder of her shift until midnight. When her time card reflected that she clocked out at 7:42 p.m., she said she clocked out for her break, but failed to clock back in. She also testified, variously, that the accident happened before and after the break. She adamantly denied that she was called to leave early that day because of a reported injury to a relative. She went to an emergency room (ER) on June 23, 1999, and was diagnosed with back pain. The records of this visit reflect a three-week history of pain. She said this was error because she told the ER personnel three days, not three weeks. The ER records also state that she denied trauma and nowhere reflect a work-related injury, although she testified that she reported it as such to the hospital personnel. The claimant said that she called Ms. V, her team leader, on June 21, 1999, to say she would not be in that day because of the flu. On or about June 23, 1999, before she came to work, she said she reported the injury to Ms. V by phone. She found out later that day that she was terminated for absenteeism. The claimant began treating with Dr. F, on July 9, 1999. He diagnosed numerous spine conditions and placed the claimant in an off-work status which he has not changed. Based on the claimant's history, he concluded her injuries were work related.

Ms. V testified that the claimant did not work her entire shift on _____, but left early because she was crying and saying that someone in her family was shot. As she was leaving, the claimant never mentioned any injury. The claimant denied that this event took place on this day. Ms. V also said that the claimant was not working with boxes on _____. When the claimant saw Ms. V on June 23, 1999, and Ms. V told her she was

fired, according to Ms. V, the claimant never mentioned an injury. Ms. V said she learned of the claimed injury in August 1999. Mr. J, the shift supervisor, testified that he terminated the claimant on June 21, 1999, and when he told her on June 22 or 23, 1999, she never mentioned an injury. He said that a doctor's office called him sometime after mid-August and informed him of the claimed injury. He said this was the first he learned of it. He also said that the only boxes the claimant would have used at any time would be stacked no higher than 38 inches from the floor.

The claimant had the burden of proof on all the disputed issues. Each could be proved by her testimony alone if found credible by the hearing officer. The claimant correctly recognized that the resolution of this case depended on an evaluation of the claimant's credibility. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The evidence in this case was in direct conflict, with the claimant's testimony at odds with that of Ms. V and Mr. J on critical points. The hearing officer considered the evidence and concluded that the claimant did not meet her burden of proof. In her appeal, the claimant asserts essentially that she was credible. 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 decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer. Rather, we find the evidence sufficient to support the determinations of the hearing officer on the disputed issues.

As noted above, the carrier appeals Finding of Fact No. 4 arguing that because the hearing officer found the claimant did not sustain an injury in the course and scope of employment, it was "superfluous, confusing and . . . inconsistent to find an inability to earn the preinjury wage because of the claimed injury." The thrust of carrier's appeal appears to be that the hearing officer in effect found no injury at all, not just no work-related injury. Taken in its totality, we construe the decision and order to reflect that the hearing officer only found no work-related injury. She did not, at least expressly, find no injury at all. The evidence of Dr. F supports a conclusion that the claimant had a back injury, which at least played some causative role in the claimant's inability to earn the preinjury wage. For these reasons, we are unwilling to grant the carrier's requested relief with regard to Finding of Fact No. 4.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge