

APPEAL NO. 000966

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 4, 2000. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability as a result of her compensable injury from September 1, 1999, to January 27, 2000, and from February 4, 2000, through the date of the hearing. In its appeal, the appellant (carrier) asserts that those determinations are against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer's decision contains a factual summary that will not be repeated herein. Briefly, the claimant testified that on _____, she was carrying a box of packing material, when the box fell, hitting the claimant's neck. The claimant stated that the blow caused her to fall backwards, landing on her buttocks. The claimant testified that she did not immediately have pain after her fall; rather, her neck and low back pain developed on the day after her injury.

Ms. D, a claim specialist with the employer, and Ms. P, the claimant's supervisor, testified that the claimant had complained of neck and back pain prior to the _____ incident at work. The claimant testified that her pain prior to _____ was in her mid-back and that she did not have any neck or low back pain before _____. The claimant acknowledged that she had sought medical treatment for her back on July 30, 1999. The records from that visit reflect complaints of neck pain that radiates down the back and into the hip and of numbness in her left hand and foot. Those records contain a history that the claimant stands and lifts heavy equipment throughout the day. On August 6, 1999, the claimant had a previously scheduled follow-up appointment at the clinic. Those records contain a history of the claimant's having fallen at work since her last appointment and include complaints of continued numbness in the claimant's left hand and foot. In addition, the carrier introduced a statement of Ms. S, who witnessed the claimant's fall on _____. Ms. S stated that the claimant did not fall hard; that the claimant indicated that she was not hurt after the fall; that the claimant had complained of low back pain for weeks prior to this incident; and that prior to the _____ fall, the claimant was "trying to get [Ms. P] with [employer] to find her a sit-down job."

Initially, we will consider the carrier's challenge to the hearing officer's injury determination. The claimant in a workers' compensation case 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 issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight

and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury and disability may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's determination that the claimant sustained a compensable injury is against the great weight and preponderance of the evidence. In so arguing, the carrier emphasized the claimant's prior complaints of neck and back pain, referenced in the claimant's medical records prior to _____ and the evidence from Ms. D, Ms. P, and Ms. S to that effect, and the claimant's denial that she had had any neck or low back problems prior to _____. The hearing officer determined that the claimant sustained an injury in the form of an aggravation of a preexisting condition. She was acting within her province as the fact finder in so finding. Our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The carrier's challenge to the hearing officer's disability determination is largely premised upon the success of its argument that the claimant did not sustain a compensable injury. However, it also argues that the claimant's "testimony concerning her inability to work is so unbelievable that for the [hearing officer] to base her decision on that testimony is manifestly wrong and unjust." Given our affirmance of the determination that the claimant sustained a compensable injury, we reject the argument that the claimant did not have disability because she did not have a compensable injury. As to the matter of the credibility of the claimant's testimony in support of her disability claim, we note that it was the hearing officer's responsibility to resolve the question of the claimant's credibility. Nothing in our review of the hearing officer's disability determination reveals that it is so contrary to the great weight of the evidence as to compel its reversal on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge