APPEAL NO. 000982

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 10, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, contending that this determination is against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a management trainee at a fast food restaurant. She testified that on _____, she slipped and fell as she walked by a cash register on her way to the restroom. She was on temporary assignment to this job location. She said the fall was witnessed by several employees, but she knew only one by name, Mr. S. The claimant first received care from an emergency room (ER) on October 2, 1999. The records of this visit reflect no mention of a fall at work, but refer to a history of arthritis and increasing joint point over the previous two weeks. The claimant could not explain this entry, denied giving a two-week history of pain, and said she told the ER people about the fall. When asked for a prior medical history, she said she mentioned unrelated right knee arthritis and from that point on the focus was on her arthritis. Her next visit to the ER was on October 14, 1999. Again, there was no mention of a fall at work. The diagnosis was chronic arthralgia. She began treatment with Dr. C, on October 22, 1999. The diagnosis was lumbar/cervical segmental dysfunction and cervicocranial syndrome. Based on the history provided by the claimant, Dr. C concluded that these conditions were caused by the fall at work.

In a transcribed interview, Mr. S denied witnessing the claimant fall at work. Apparently, there was some confusion, initially, about the claimed date of injury. Several other statements of coworkers and supervisors denied witnessing a fall.

The claimant had the burden of proving she sustained a compensable injury as alleged. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did presented a question of fact for the hearing officer to resolve and could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer recounted the evidence, noted some initial confusion in the date of the claimed injury and the absence of mention of a fall at work in the ER records. From this, he concluded that the claimant failed to meet her burden of proving a compensable injury. In her appeal, she asserts that her testimony and the records of Dr. C prove her position. This is true if that evidence is taken at face value and contrary evidence rejected. Section 410.165(a), however, provides that the hearing officer is the sole judge of the

weight and credibility of the evidence. In his role as fact finder, the hearing officer could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. He simply rejected the claimant's evidence as nonpersuasive. 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 determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

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

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge