

APPEAL NO. 001175

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 23, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she did not have disability as a result of her compensable injury. In its appeal, the appellant (carrier) argues that the hearing officer's injury determination is against the great weight and preponderance of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant. In addition, the claimant did not appeal the hearing officer's determination that she did not have disability as a result of her compensable injury.

DECISION

Affirmed.

The claimant testified that on _____, she was working as a diet clerk for a hospital. She stated that on _____, she tripped over the leg of a chair, when she went to hang up her telephone, falling on her left side with the chair landing on her. The claimant testified that she reported her injury shortly after it happened to a supervisor and that she did not seek medical attention until the day after her injury. The claimant testified that she injured her left hip and low back as a result of the fall. After initially seeking treatment at the emergency room, she sought treatment with her family doctor. The claimant stated that the pain medications he gave her were not effective; thus, she sought treatment from a chiropractor, who kept her off work until October 13, 1999. On cross-examination, the claimant acknowledged that she was counseled for performance problems shortly before her injury. In addition, she testified that there were other employees in the office separated from her by cubicle walls and that none of those employees gave any indication of having heard her fall or of the chair falling on her. Finally, the claimant testified that she was upset because she did not receive the raise she had been promised when she moved into the diet clerk position.

Ms. B, the assistant director of patient services with the employer, testified that she did not learn that the claimant was alleging that she sustained a work-related injury until October 22, 1999. Ms. B stated that she believed that the claimant was visibly upset after the conversation about her performance on _____. In addition, Ms. B testified that she had also counseled the claimant about performance problems about two weeks before the alleged injury. Finally, Ms. B stated that the claimant had come to her to discuss the fact that she did not get a raise when she changed positions, noting that the claimant also did not receive the 15 hours of overtime in the clerk position that she had received in her prior position and that the claimant had indicated that she was having trouble paying her bills without that income.

The carrier contends that the hearing officer's determination that the claimant sustained a compensable injury is against the great weight of the evidence. 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(a). 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. 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. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight, emphasizing the evidence it believes shows that the claimant's claim is a spite claim. The carrier also emphasized those factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. Our review of the record does not demonstrate that the hearing officer's determination that the claimant sustained a compensable injury 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 hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge