

APPEAL NO. 001293

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 April 6, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appeals these determinations on sufficiency grounds. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant worked for the employer as a cashier at a gasoline station. The claimant testified that on _____, she was sweeping cigarette ashes around a pump when a car entered the parking lot traveling at a high rate of speed. The claimant testified that she was afraid the car was going to hit her so she ran across the parking lot to get out of the way and, as she was running, she slipped in some oil, falling and injuring her low back, right thigh, and right leg. The claimant stated that she sought medical treatment the next day at the local hospital and was treated and released from work. The claimant subsequently sought medical treatment with two other doctors from whom she received conservative therapy and was released from work.

Medical records from the hospital dated November 12, 1999, reflect that the claimant gave a history of losing her balance and slipping at home on _____. Other evidence was admitted which conflicted with the claimant's testimony of sustaining an injury at work on _____.

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 resolve. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as a 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 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We find

there was sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

The claimant appealed the hearing officer's finding of no disability. "Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* 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.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Gary L. Kilgore
Appeals Judge