

APPEAL NO. 001351

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 May 26, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ or _____, or on any other relevant date; that the claimant did not sustain a compensable injury to any part of her body; and that the claimant has not had disability. The claimant appealed, contending that these determinations are against the great weight and preponderance of the evidence in that the hearing officer failed to give due consideration to her evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

This case hinges on the credibility of the claimant. She worked as a bakery manager at a food store. She testified that on Monday, _____, at about 7:30 a.m., she was on a ladder in the store freezer putting away supplies that had been delivered that day when she fell off the ladder, landing first on her left leg and then on her buttocks. She is claiming a left leg (knee), neck and back injury. The incident was unwitnessed. She said she finished putting away the inventory and around 9:30 a.m. that day reported her injury to Mr. M, the store manager. She also said she continued working that day and quit at either 2:00 or 4:00 p.m.

The claimant's brother-in-law, Mr. R, who also worked at the store, testified that the claimant's mother-in-law told Mr. R's wife, who then told Mr. R, that the claimant actually fell on Sunday, _____, in her garage at home during an argument with her husband. Mr. R admitted to a history of multiple burglary convictions, state prison time, prior drug use, and numerous traffic violations. He also said that on March 2, 2000, while at work, he heard a sound, like a box falling, coming from where the claimant worked, at which time the claimant told him she fell off a ladder. The claimant testified that Mr. R had personal animosity toward her because she and her husband sometime in late January 2000 told Mr. R that he and his family could no longer live at the claimant's house because of his violent conduct. Mr. R said he was not kicked out of the house, but left voluntarily.

The hearing officer succinctly points out in his recitation of the evidence, various problems or inconsistencies which weighed on the claimant's credibility. These included evidence from the claimant's time cards that do not reflect the same hours she said she worked on the date of the claimed injury; medical evidence that the claimant initially reported only a left leg injury; Mr. M's denial that the claimant reported her injury to him on _____, as well as his testimony that he saw the claimant limp at work, but not in the parking lot; the mother-in-law's testimony that she never told her daughter (who was married to Mr. R) that the claimant fell at home; and testimony from a subordinate of the

claimant that she came in at noon on _____, saw the claimant limping and was told by her that she had fallen and hurt her leg.

The claimant had the burden of proving she sustained the claimed compensable injuries. 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 decide and could be proved by her testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) further provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In this case, there were discrepancies and incongruities in the claimant's testimony. There was also the testimony of Mr. R who seemed to stand alone in his account of an accident at home, not at work. The hearing officer found in the light of all the evidence, that the claimant was not persuasive in her attempt to establish a compensable injury to any body part on any relevant date. The claimant argues on appeal that the hearing officer refused to consider her evidence. We cannot agree that he refused to consider this evidence. He simply refused to find it 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 find the evidence sufficient to support the hearing officer's determination that the claimant did not sustain a compensable injury.

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:

Gary L. Kilgore
Appeals Judge

Kathleen C. Decker
Appeals Judge