

## APPEAL NO. 001362

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 9, 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 contrary to the great weight and preponderance of the evidence. The respondent (carrier) replied that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant, who was 66 years old at the time of the hearing, was hired on September 13, 1999. She testified that on September 21, 1999, she was asked to unpack some boxes and that this involved cutting open and lifting 25- to 30-pound boxes onto a table and unpacking them. As a result, she said, she felt pain generally all over, but particularly in her low back, neck, shoulders, and feet. In prior statements and at the benefit review conference she said that the injury occurred in the afternoon of \_\_\_\_\_. She further testified that she was terminated on \_\_\_\_\_, but denied that it was for repeated tardiness. Dr. S, her treating doctor, diagnosed lumbosacral and cervicothoracic sprain/strain, lumbar syndrome, and myofascial pain. The claimant has not worked since her termination and claims disability from this date.

The claimant had the burden of proving she sustained a compensable injury as claimed. 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 the claimant's testimony alone if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer commented that she did not find the claimant credible because of inconsistencies in the date of the claimed injury and the extent of the injury. While one could argue that an inconsistency of one day in the date of injury need not be significant, the hearing officer could consider it important on the credibility issue because of the fact of termination and the need to finally accommodate the date of injury to the date of termination. She could also find unpersuasive the claimant's contention of a general pain throughout her body as a way of explaining the different body parts claimed to be injured in different accounts of the injury. In her appeal, the claimant essentially asserts that she was injured as claimed and that her memory may have been fuzzy about some specifics.

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 decline to substitute our opinion of the credibility of the claimant for that of the hearing officer. Rather, we find the evidence sufficient to support the hearing officer's determination that she did not sustain a compensable injury as claimed.

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.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge