APPEAL NO. 001409

This appeal arises pursuant to the Texas Workers' Compensation Commission Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 18, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, contending that these determinations are 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 began working on April 7, 1999, as a receptionist. She testified that on _____, she slipped when she stepped on some water on the floor and broke the fall with her right arm. It was her contention that this fall jarred and injured her neck. She admitted to a prior history of minor neck injuries (sprains and strains) for which she had been receiving chiropractic care form Dr. J, and others.

Medical records in evidence after the claimed injury included a hospital admission on _____, for chest pain. A heart attack was ruled out, but the admission records reflect "a recent fall and [the claimant] has a somewhat sore neck." There is no mention in these records that the injury was work related. Dr. J completed an Initial Medical Report (TWCC-61) on May 26, 1999, which reflected a date of visit of _____. In a letter of May 26, 1999, Dr. J wrote that the claimant stated that she had fallen on _____, in her office and had extreme neck pain. He referred the claimant to Dr. C and further commented that he had seen the claimant on _____, "and did not see her again until May 26, 1999. She did not tell me that this was a work-related injury. Therefore, I did not send in the Workers' Comp forms until now." Dr. J's record of treatment on _____, was not evidence. His April 6, 1999, record reflects complaints of neck pain with a history of pain from an incident where the claimant fell off a ladder around Christmas of 1998.

An MRI on May 4, 1999, disclosed herniation at C5-6. However, a cervical myelogram on November 16, 1999, found no "obvious herniation." In a letter of May 11, 1999, Dr. C described a history provided by the claimant of "beatings from her past husband and feels that this may have been in fact aggravated her overall symptoms." The claimant also said that she was involved in a motor vehicle accident in 1996 and suffered whiplash, that she had another 1996 neck sprain/strain injury while working for another employer, and that she suffered a fall from a horse in 1981.

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 presented a question of fact for the hearing officer to decide and could be proved by the claimant's testimony alone if found

credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer commented in her decision and order that she did not find the claimant credible in her assertion of at least a new aggravation-type injury to her neck on _____. The hearing officer's reasoning included the history of prior neck injuries; her testimony that she saw Dr. J in early April 1999 for pain radiating up from the lumbar spine, although Dr. J refers in his April 6, 1999, notes to a fall from a ladder; the absence of records of Dr. J for other visits in April 1999 leading up to the visit on _____; comments of Dr. C that the claimant required neck surgery, but needed insurance to pay for it. In addition, the hearing officer commented that Dr. J's "attempt to relate the injury to a fall at work is not credible." In her appeal, the claimant argues essentially that she met her burden to proof with evidence of a much more serious condition (cervical herniation) after the claimed injury; and that Dr. J and Dr. C related her cervical herniation to her fall at work, all of which established a compensable injury.[1] Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Pursuant to her authority as fact finder, the hearing officer simply did not find the claimant's evidence credible. We will reverse the 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 thias standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer.

The claimant also argues bias on the part of the hearing officer because the hearing officer commented in her decision and order that the claimant did not relate to Dr. C her history of drug abuse. This comment is based on the hospital admission records for chest pain which stated that the claimant "has used amphetamines up to 51 days ago but is not currently using drugs." The claimant contends that this drug usage had nothing to do with the claimed neck injury and it was "highly prejudicial" for the hearing officer to comment on it. We observe first that this was evidence offered by the claimant. Second, the trust of the hearing officer's comment was not that the drug abuse became a factor in her decision, but only that Dr. C proceeded to an opinion on causation without apparent knowledge of the prior drug abuse. Under these circumstances, we perceive no error in the consideration of this evidence for the purpose stated by the hearing officer.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1999 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

[1]The claimant also relies on a written statement of a witness to the alleged fall. This statement was not admitted into evidence because it was untimely exchanged. That ruling was not appealed.

For the forgoing reasons, we affirm the decision of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge