

APPEAL NO. 001613

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 June 6, 2000. He determined that the appellant (claimant) did not sustain a compensable neck injury on _____, and that the claimant did not have disability. An issue of the claimant's average weekly wage was resolved by agreement. The claimant appealed the adverse findings, expressing her disagreement with them. The respondent (carrier) replied that the decision is correct, supported by sufficient evidence, and should be affirmed. We will not consider documents submitted by the claimant for the first time with her appeal.

DECISION

Affirmed.

The claimant worked as a mobile home production line inspector. She testified that on _____, she fell while inspecting a mobile home and claims a resulting neck injury. The decision and order contains an extensive recitation of the evidence, which need not be repeated in detail. The carrier submitted evidence of the claimant's prior workers' compensation claims, including two Employer's First Report of Injury or Illness (TWCC-1) forms for a neck injury on both _____, and _____. Dr. M, treated the claimant for at least the _____, injury. Although his reports of this treatment contain numerous references to neck pain, the claimant insisted at the CCH that this was a thoracic spine injury, not a cervical spine injury. She saw Dr. M on September 30, 1999, with complaints of neck pain. His diagnoses included neck sprain/ strain. He considered this to be a new injury even though his records through June 1, 1999, reflect complaints of neck pain. The claimant further testified that Dr. M's treatment for her claimed current injury was paid for by the carrier under the _____, injury. A short-term disability claim report signed by both the claimant and Dr. M in October 1999 stated that the claimant had never previously had a cervical spine condition.

Also in evidence were radiographic reports from before and after the claimed _____, injury. A cervical MRI on March 31, 1995, was read as showing minimal ridging at C4-5 and C5-6. A cervical MRI on October 8, 1999, revealed spondylosis at C4-5 and C5-6 with some narrowing, but without herniation. A cervical myelogram on February 15, 2000, showed mild ridging at C4-5 and a CT scan on February 17, 2000, showed spondylosis at C4-5 and C5-6.

The claimant had the burden of proving she sustained a cervical spine injury on _____, as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did presented a question of fact for the hearing officer to decide. In his recitation of the evidence, the hearing officer commented that he found both the claimant and Mr. M lacking in credibility primarily because both appeared to deny a prior neck injury or condition and because of

the similarity in the radiographic studies before and after the claimed injury. He concluded from this evidence that the claimant did not sustain a compensable neck injury on _____, as claimed, or a compensable aggravation of a prior cervical condition. In her appeal, the claimant essentially asserts that her evidence established that she sustained the claimed injury. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In his role as fact finder, the hearing officer could accept or reject in whole or in part any of the evidence. He simply did not find the claimant's evidence credible for the reasons stated above. 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 respective witnesses for that of the hearing officer. Rather, we find the evidence sufficient to support the determination that the claimant did not sustain a compensable workers' compensation 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.

Alan C. Ernst
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge