

## APPEAL NO. 001640

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 2, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury and had disability beginning on December 30, 1999, and continuing through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's "decision is so far beyond reason that it indicates a bias on the part of the Hearing Officer in favor of the Claimant." The appeals file does not contain a response to the carrier's appeal from the claimant.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, she sustained a compensable injury, when she climbed on top of a small stepladder to retrieve a syringe that was stuck in the machine she was operating. She stated that the smock she was wearing got caught on the machine, causing her to twist backwards, lose her balance, and fall to the ground landing on her back. The claimant testified that as she was pulled and twisted backwards, she heard a "crack" in her neck and back. The claimant stated that she completed her shift and worked overtime that evening and did not immediately report her injury, although she told a coworker and her supervisor that she was not feeling well. She testified that by the next morning her back pain was worse and, as a result, she sought medical treatment at the emergency room.

Records from the \_\_\_\_\_, emergency room visit reflect complaints of back pain that started the night before. Those records also contain a history of the claimant's having been injured at work. Specifically, they state that the claimant's "jacket was caught in machine & back forcefully twisted." They do not reflect that the claimant was standing on a stool or that she fell to the ground landing on her back. The claimant was diagnosed with a lumbar strain. Thereafter, the claimant began treating with Dr. R. Dr. R diagnosed lumbar neuritis, thoracic sprain and cervical sprain. Dr. R's records reflect a history of the claimant's having been injured at work. Specifically, his record state that the claimant was stepping down from a stepladder, when a garment she was wearing got caught on the machine, causing her back to twist. The records also state that the claimant "heard her whole back pop" but they do not reflect that the claimant fell to the ground landing on her back, as she testified at the hearing. Dr. R took the claimant off work at her initial appointment and had continued her in that status through the date of the hearing.

Ms. R testified that on December 30, 1999, Mr. G, claimant's supervisor, asked her to call the claimant and to translate from Spanish to English the claimant's statement as to what had happened at work on \_\_\_\_\_. Ms. R stated that the claimant told her that her uniform got caught on a piece of metal and that it caused her to twist her back. Ms. R testified that the claimant did not tell her that she was standing on a stool, that she lost her balance, or that she fell off the stool, landing on her back on the concrete floor. Finally,

Ms. R stated that the claimant indicated that she had injured her back and that she did not mention a neck injury.

Mr. S testified that Mr. G asked him to translate a conversation between the claimant and Mr. G on January 7, 2000, when the claimant came to the employer's premises and demonstrated how her injury occurred. Mr. S stated that the claimant demonstrated that she was standing on a stool; that she was reaching up to get a part from the machine; that the stool gave out beneath her; and that she had to grab the machine to keep from falling. Mr. S stated that the claimant indicated that she had injured her back and denied that she had stated that she fell off the stool and landed on her back on the concrete floor. Mr. S maintained that his impression from the conversation was that the claimant slipped and twisted her back but that she did not fall to the ground.

Mr. G testified that he was the claimant's supervisor on the date of the alleged injury and that she told him on the evening of \_\_\_\_\_, that she was not feeling well when he asked her to work overtime, but she did not tell him she had been injured at work. Mr. G stated that when the claimant came in to demonstrate how she had been injured, she demonstrated that she was standing on a stool; that the smock she was wearing got stuck on a piece of metal; that she lost her balance; and that she slipped on the stool. However, she did not indicate that she fell off the stool or that she landed on her back. Finally, Mr. G testified that the claimant indicated that she had injured her back but did not mention a neck injury.

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On appeal, the carrier contends that the hearing officer's decision is against the great weight of the evidence, emphasizing the factors it believes diminish the credibility of the claimant's testimony and the other evidence offered in support of her claim. The carrier emphasized the same factors at the hearing, and the significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant sustained a compensable injury is supported by sufficient evidence and our review of the record does not demonstrate that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The carrier's challenge to the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of that determination, we likewise affirm the determination that the claimant had disability as a result of her compensable injury from December 30, 1999, through the date of the hearing, June 8, 2000.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge