APPEAL NO. 002014

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 August 2, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working as a sanitation supervisor for the employer; that he walked into the "soap room"; that his foot slipped in liquid soap on the floor; and that he did not fall to the ground but he twisted his right knee. He stated that he was able to complete his shift on May 3rd and that he worked most of his shift on May 4, 2000, until he was terminated for reasons unrelated to his alleged injury. The claimant stated that he reported his injury to Mr. M, the district manager for the employer, during the conversation in which the claimant's employment was terminated. At the hearing, Mr. M denied that the claimant said anything to him during the course of that meeting, that would indicate that he had sustained a knee injury at work the day before. On cross-examination, the claimant acknowledged that he was involved in a motor vehicle accident on May 18, 2000; however, he maintained that he injured his neck in the accident and did not injure his right knee at that time.

The claimant testified that he first sought medical treatment at the emergency room on May 20, 2000. The records from the emergency room reflect that the claimant was diagnosed with a right knee sprain. Those records also reflect that the claimant reported a history of having twisted his knee on _____. On May 23, 2000, the claimant began treating with Dr. K, who continues to serve as the claimant's treating doctor. Dr. K initially diagnosed a right knee sprain. Dr. K referred the claimant for a right knee MRI. The May 30, 2000, MRI revealed a "linear tear, anterior horn, lateral meniscus, extending to the inferior articular surface."

The claimant had the burden to prove that he 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 facts have been established by 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).

In this instance, the hearing officer stated that "[i]n all likelihood the Claimant was involved in a work related incident on _____. . . ." However, the hearing officer further determined that the evidence "was insufficient to establish a causal link between the Claimant's work related activities on May 3 and his subsequent right knee symptoms." The hearing officer emphasized that the claimant continued to work on May 3rd and May 4th prior to his termination, that the claimant did not report his injury prior to his termination, and that the claimant did not seek medical treatment until May 20, 2000. Each of those factors was properly considered by the hearing officer in making his credibility determinations and in resolving the issue of whether the claimant sustained his burden of proving that he sustained a compensable injury. The hearing officer was acting within his province as the finder of fact in finding that the claimant did not sustain a compensable injury in the _____, incident at work. 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.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge