APPEAL NO. 002145

Following a contested case hearing (CCH) held on August 23, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the respondent (claimant herein) sustained a compensable injury on _____, and had disability from April 28, 1999, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the hearing officer's findings and decision are contrary to the great weight and preponderance of the evidence. The carrier specifically contends that the claimant failed to show that she suffered damage or harm to the physical structure of her body, that the claimant did not report a job-related injury, and the claimant was not working for the employer at the time of her injury. Finally, the carrier also contends that the claimant did not have disability because she did not suffer a compensable injury and had wages greater than a preinjury wage for a portion of the period for which the hearing officer found disability. The claimant responds that the carrier's request for review is frivolous and the carrier should be sanctioned for bad faith. The claimant argues that her injury was not only supported by her testimony but by medical evidence, including medical reports from a doctor to whom the claimant was sent by the employer. The claimant argues that the carrier's assertion that she was not working on the date of injury is contradicted by pay stubs and that the carrier's contention that the claimant was paid for work after the date of injury is contradicted by the carrier's position that the claimant was not employed on the date of injury as well as by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that she was injured on _____, when she slipped and fell at work. The claimant testified that she injured her right hip and right elbow in the fall and that continued pain in her right leg, back and right arm has prevented her from performing her usual duties since that time. The claimant's injury was substantiated by the testimony of her supervisor, who is also her daughter, and medical records, including the records of Dr. K, a doctor to whom the employer referred the claimant.

Ms. P, a part-owner of the employer, testified that the claimant was improperly put on the payroll of the employer by Ms. B, an area manager for the employer. Ms. P testified that Ms. B had the authority to hire employees and that Ms. P had no personal knowledge of the events surrounding the injury as she was out of the office during April and most of May 1999 due to her own surgery.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole

judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found an injury and there was sufficient evidence to support this in the testimony of the claimant, her supervisor, and the medical evidence.

As far as whether the claimant was employed by the employer on the date of injury, we first note that there was not a separate issue before the hearing officer regarding this. In any case, there was testimony from the claimant, her supervisor and pay stubs showing the claimant was employed by the employer on _____. While Ms. P disputed that the claimant had been properly hired by the employer, she testified that she was out of the office during this period and that Ms. B had the authority to hire employees. With the evidence in this posture, there was certainly sufficient evidence to support the hearing officer's finding that the claimant was employed by the employer on _____.

We also note that initially there was an issue before the hearing officer as to whether the claimant had timely reported her injury, but that the parties withdrew this issue at the beginning of the CCH. On appeal the carrier argues that while the evidence showed that the claimant reported an injury, she did not report she was injured while she was working. In light of the hearing officer's finding that the claimant was employed by the employer on the date injury, as well as testimony by the claimant and her supervisor that the injury was reported on the date it took place, we find no merit in the carrier's argument concerning timely report of injury.

Disability is a question of fact. Texas Workers' Compensation Commission Appeal

No. 93560, decided August 19, 1993. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In the present case, disability is supported by the testimony of the claimant and medical evidence. Having rejected the carrier's argument that the hearing officer's decision regarding injury should be reversed, we find no merit in the carrier's argument that the claimant did not have disability because she did not suffer a compensable injury. With at best conflicting evidence concerning whether or not the claimant earned more than her preinjury wage for a period of time after her injury, we find no error in the hearing officer's finding the claimant had disability from April 28, 1999, through the date of the CCH.

As far as the claimant's request for sanctions is concerned, we have no authority to levy sanctions.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge