

APPEAL NO. 002206

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 16, 2000. With respect to the issues before her, the hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable injury to her left knee on _____, but that she did not injure her head, neck, right shoulder, left ankle, abdomen, low back, and right arm at that time; and that the claimant had disability as a result of her left knee injury from March 21 to April 13, 2000. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. The claimant also appears to assert error in the hearing officer's having excluded a witness statement and testimony. In its response to the claimant's appeal, the respondent/cross-appellant (carrier) urges affirmance of the challenged determinations; however, in its cross-appeal, the carrier contends that the hearing officer's determinations that the claimant sustained a compensable injury to her left knee and had disability for the period from March 21 to April 13, 2000, are against the great weight of the evidence. The appeals file does not contain a response to the carrier's cross-appeal from the claimant.

DECISION

Affirmed.

The claimant testified that on _____, she was working in a fast food restaurant and was going to get a customer some ice water, when she slipped in water on the floor and fell to the concrete floor. The claimant stated that she landed on her left knee with her right leg out in front of her and that she then fell backwards "flat on the ground," hitting her head and back on the floor. The claimant stated that she reported her injury to Ms. C, the assistant manager, and that Ms. C went out to get Ms. H, the general manager. The claimant stated that Ms. H noticed that the claimant's pants were wet from having fallen in the water on the floor and advised her to go to the bathroom to dry them with the hand dryer. Finally, the claimant testified that she stayed at work for about an hour after the fall and then she asked to go to the doctor.

The claimant saw Dr. K on _____. In his Initial Medical Report (TWCC-61), Dr. K gives a history of the claimant's having slipped and fallen at work and noted complaints of back and left knee pain. Dr. K prescribed medications. The claimant testified that she did not believe her condition was improving with the use of the medications; thus, she changed treating doctors to Dr. S. Dr. M. In a report dated March 23, 2000, Dr. M stated that his examination of the claimant's left knee revealed tenderness and edema on palpation of the medial and lateral aspects of the left knee and diagnosed left knee internal derangement syndrome. Dr. M also diagnosed a head contusion, bilateral cervical facet syndrome, bilateral thoracic facet syndrome, bilateral lumbar facet syndrome, myofascial pain syndrome, cervicogenic headaches, left ankle internal derangement syndrome, and right shoulder internal derangement syndrome. Dr. M took the claimant off work and completed a form stating that she should remain off work until

her next office visit on April 13, 2000. The claimant testified that Dr. M has continued her in an off-work status; however, the medical records from Dr. M in evidence do not contain off-work slips past April 13, 2000.

Ms. H testified that if the claimant had fallen at work, the claimant's coworkers, who were within 10 to 18 feet of the site of the claimant's alleged fall, would have seen her fall. Ms. H stated that when the claimant reported her injury to her on _____, the claimant only indicated that her knee hurt. Ms. H stated that the claimant's pants were not wet when she reported her injury and that the claimant's knee was red but that it did not appear to be bruised or swollen. In addition, Ms. H maintained that the claimant told her that it was the claimant's right knee that was injured and that the knee that was red was the right knee not the left knee. Finally, Ms. H stated that the claimant did not have the appearance of having suffered injury to any body part other than her knee.

Initially, we will consider the claimant's assertion that the hearing officer erred in excluding a witness statement of Ms. CH and in not permitting Ms. B to testify. The claimant acknowledged that she did not timely exchange Ms. CH's statement with the carrier and that she did not timely identify either Ms. CH or Ms. B as a person with knowledge of relevant facts. The hearing officer determined that the reasons advanced by the claimant for her failure to do so did not rise to the level of good cause. Our review of the record does not demonstrate that the hearing officer abused her discretion in making the challenged evidentiary rulings.

The claimant had the burden to prove that she sustained a compensable injury and the nature and extent of her injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presents 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. 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 determined that the claimant sustained a compensable injury to her left knee when she slipped and fell at work on _____; however, she further determined that the claimant did not sustain her burden of proving that she also injured her head, neck, right shoulder, left ankle, abdomen, low back, and right arm at that time. The hearing officer was acting within her province as the fact finder in accepting the portion of the claimant's testimony that she had slipped and fallen at work and that the fall resulted in injury to the claimant's left knee and in rejecting the balance of the claimant's testimony concerning the other body parts injured. She was also free to

credit that evidence over the evidence emphasized by the carrier which tended to show that the claimant did not fall at work. Our review of the record does not demonstrate that the hearing officer's determination that the claimant injured her left knee at work 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, supra; Cain, supra. Likewise, nothing in our review of the record reveals that the hearing officer's determination that the claimant did not injure her head, neck, right shoulder, left ankle, abdomen, low back, and right arm in the fall is so contrary to the great weight of the evidence as to compel its reversal on appeal.

The carrier's challenge to the hearing officer's 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, therefore, affirm the determination that the claimant had disability from March 21 to April 13, 2000. To the extent that the claimant contends that the hearing officer erred in determining that her disability ended on April 13, 2000, we note that the hearing officer stated that she had discounted the claimant's testimony concerning her disability because the claimant "exaggerated the injury to such a great degree." The hearing officer was free to consider that factor in making her credibility determination. The disability determination is supported by sufficient evidence and is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, we will not disturb it.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge