

APPEAL NO. 002230

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 August 21, 2000. The issues at the CCH were whether the appellant, who is the claimant, sustained a compensable injury on _____, and had disability from that injury and, if so, for what periods.

The hearing officer found that while the claimant fell and hit her elbow, she had transitory pain only and did not sustain physical damage, especially to the claimed areas of her spine or upper and lower extremities. He found no disability or inability to obtain and retain employment due to the alleged injury. The claimant has appealed, urging evidence she says constitutes a preponderance in her favor. The respondent (carrier) responds that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer's recitation of facts is fairly comprehensive and we will incorporate it by reference here. As noted, the claimant said she slipped and fell on _____, while on the clock at work for (employer) but before assuming her regular duties at 7:00 a.m. She said this occurred while she was pushing a two-wheel dolly with some items on it (on cross-examination, she said this occurred while pulling the dolly). She said that she reported the incident right away to a supervisor, Mr. G, but he disparaged the event and told her she was making it up. However, the claimant also said that Mr. G said he would report the injury. The claimant said her back hurt, and she also hit her leg on a pallet so that it was bleeding. The claimant said she worked a full day in pain, not up to full speed.

The claimant said that she did not know if there was an infirmary in the plant, and so she self-medicated herself until she saw a doctor, Dr. M, on March 13, 2000, after her employment was terminated by the employer. She said that Dr. M prescribed a powder solution and vitamins that he said would help the bones in her back, and he advised that she stay off work, but the claimant returned to work for another employer because she needed the money. She said that she worked part-time or less, only three or four hours a day. The claimant said she had no private insurance to take care of her medical expenses.

The claimant said that she fell from side to side and hit her back. She reconciled this with her statement to the adjuster, that she had fallen forward on her stomach, by saying that she had to roll over to get up.

The claimant said that this was not the first fall she had at work--the first had been a fall on her hands and knees two weeks after starting work on May 24, 1999. In her

recorded statement, she contended that she "jarred" her back in each fall. Under further questioning from the hearing officer, she said that she was practicing brazing on February 25, before she began work, and that this was the first and only time she had done that. Mr. G testified and agreed she had permission to practice brazing on that day. He agreed that she reported the fall to him and that she was holding her left elbow. Mr. G said that the claimant told him only that she hurt her left arm. He suggested filling out an accident report and the claimant refused and said that she was okay.

Information was developed concerning events leading up to her termination for failure to properly perform her job. The claimant said that Mr. G "was always writing something up" on her.

The claimant earned \$6.19 (which included tips) for her second employer, working about 25 hours a week; she said she earned \$6.00 an hour for the employer at the time of her injury, working 40 hours a week and possibly overtime.

Dr. M's initial report indicated that he found some tenderness in the claimant's lumbar spine and left hip, but that straight leg raising was 90E. She was diagnosed with cervical, thoracic, and lumbar strain, according to a physical therapy evaluation. An MRI done April 26, 2000, was reported as showing an encroaching herniated disc at L5-S1.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Our review of the evidence on the appealed issues of injury and disability find that there is sufficient

support for the hearing officer's determinations of these issues. We accordingly affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge