

APPEAL NO. 002425

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 September 21, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. In her 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 (self-insured) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was working as a fitting room attendant with the self-insured department store. She stated that she was reaching overhead to grab a handful of clothes on a rack to move them to another rack and she felt a sharp pain in her left shoulder and into her mid back. She testified that she was attempting to move approximately six pieces of women's clothing at the time. The claimant stated that she immediately reported her injury to Ms. E, her supervisor, who completed an accident report and referred the claimant to a clinic for medical treatment.

The clinic diagnosed the claimant with a left shoulder strain and released her to return to work with restrictions. The claimant stated that she worked about two more hours on _____, after she returned from the doctor and that her pain and muscle spasms became worse that evening. She testified that she did not return to work on May 16, 2000, but rather sought medical treatment from Dr. A, a chiropractor, who has diagnosed her with "cervical disc disorder-unspecified," "paraesthesia," and "deep & superficial MM spasm." Dr. A took the claimant off work at the May 16th appointment and had not released her to return to work as of the date of the hearing.

The claimant had the burden to prove that she sustained an injury in the course and scope of her employment on _____. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question 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 did not sustain her burden of proving that she was injured at work on _____. The hearing officer simply was not persuaded that the evidence presented by the claimant established that she sustained damage or harm to the physical structure of her body as a result of the activity of moving the clothing. In making his determination, the hearing officer stated “[t]he mechanism of injury alleged is certainly possible but is not probable in Claimant’s case because Claimant was not a credible witness.” The hearing officer was acting within his province as the fact finder in so resolving credibility. Our review of the record does not demonstrate that the hearing officer’s determination that the claimant did not sustain a compensable injury 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. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer’s decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Kenneth A. Huchton
Appeals Judge