

## APPEAL NO. 002491

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 20, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_. In its appeal, the appellant (carrier) contends that the hearing officer's injury determination is against the great weight of the evidence. In her response to the carrier's appeal, the claimant urges affirmance.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, she was working as a waitress for a restaurant, and that as she was setting down a tray of food, she lost her balance and fell to the floor, landing on her low back. The claimant stated that she reported the incident to her supervisor that evening but she did not tell him she had sustained an injury because the pain did not begin until a couple of days thereafter. The claimant stated that she reported an injury to her supervisor and that he delayed in giving her an accident report to complete so she had to delay seeking medical treatment. The claimant began treating with Dr. M, a chiropractor, on November 16, 1999. Dr. M treated the claimant with therapy and wanted to send the claimant for an MRI; however, that had to be delayed because of the claimant's pregnancy. In her November 16, 1999, report, Dr. M noted a history of the claimant's having lost her balance as she squatted to put a tray on a table at work and falling to the floor, landing on her low back. Dr. M further noted that the claimant's subjective complaints were supported by the objective findings on examination and that "to a reasonable degree of medical certainty, there is a causal relationship between the current complaint and the occupational injury reported." On August 11, 2000, the claimant had a lumbar MRI, which revealed "mild posterior concentric disc displacement at the L4-L5 and L5-S1 without compressive or lateralizing disc herniation."

Ms. H testified that she worked as a waitress/hostess for the restaurant where the claimant worked. Ms. H stated that the claimant tripped on several occasions but that she never saw the claimant fall to the ground. In addition, Ms. H stated that she recalled an incident where the claimant lost her balance while knelt down to put her tray on a table; however, Ms. H stated that she was able to catch the tray for the claimant and that the claimant did not fall to the ground when she lost her balance.

The claimant had the burden to prove that she 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, decides what weight to give to the evidence, and

determines what facts the evidence has 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).

On appeal, the carrier contends that the hearing officer's injury determination is against the great weight of the evidence, emphasizing the same factors that it emphasized at the hearing. The significance, or lack thereof, of those factors was a matter left to the discretion of the hearing officer. The hearing officer's determination that the claimant sustained a compensable injury is sufficiently supported by the claimant's testimony and the medical evidence from Dr. M. The hearing officer was acting within his province as the fact finder in accepting the claimant's testimony that she fell at work and that she injured her low back in that fall over the evidence from Ms. H that although the claimant lost her balance, she did not fall to the floor. 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, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge