

## APPEAL NO. 002493

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 September 29, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury to any part of her body on \_\_\_\_\_ (all dates are 2000 unless otherwise noted), and that the claimant has not had disability.

The claimant appeals, questioning why the hearing officer found the respondent's (carrier) witness more credible than her testimony, emphasizing her own testimony, and stressing that because she is a small person, she "could suffer an injury . . . a lot easier than a large person." The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier responds, urging affirmance.

### DECISION

Affirmed.

The claimant was employed as a customer service associate in the employer's customer contact center. On \_\_\_\_\_, the claimant went to speak with her supervisor, Ms. M, in Ms. M's cubicle. The claimant testified that as she was exiting the cubicle walking backward, she "walked into" a recycling bin. The claimant testified that she is 4' 11" tall and weighs 115 pounds and that the lid of the trash bin hit her right upper back. The claimant contends that she sustained injuries to her right upper back, right shoulder, and right arm. The claimant said that she reported the incident to Ms. M, that she returned to her desk, that she was unable to work further, that she tried to call her regular doctor (who was treating her for an unrelated prior low back injury) but was unable to contact him, and that she told Ms. M that she was going to the (clinic) for medical attention. The claimant testified that she went to the clinic, saw Dr. B, who performed tests and took the claimant off work, and that she returned to work and gave the employer an off-work slip taking the claimant off work for four months.

Ms. M testified that the claimant did have a conversation with her, that the claimant "stepped" back into the trash can (or bin), that the claimant "grabbed herself" and "ten minutes later told me [Ms. M] that she was going to the doctor," and that the claimant "overdramatized at that point." Ms. M also testified that the claimant was about to enter into phase 1 of 3 phases of discipline for absenteeism.

The medical evidence includes a report from Dr. B of the \_\_\_\_\_ visit with a tentative diagnosis of cervical and thoracic sprain, thoracic contusion, and lumbar sprain (the claimant did not allege a lumbar injury). The claimant was prescribed physical therapy for six weeks and work hardening for six weeks. The claimant, at the time of the CCH, testified that she is getting better but had still not returned to work. X-rays, MRI, and EMG testing were all negative.

The hearing officer, in the discussion portion of his decision, commented that the claimant "is not persuasive that the mechanism of injury alleged could have caused the injury claimed." The claimant, in her appeal, reiterated her testimony and contentions, arguing that "Disability [and injury] may be established by testimony of the claimant; objective medical evidence is not required."

Generally, injury and disability issues can be established on the basis of a claimant's testimony alone, if believed. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). 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). The hearing officer simply found the claimant's testimony unpersuasive. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Susan M. Kelley  
Appeals Judge