

APPEAL NO. 002551

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 October 11, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence. The respondent (carrier) filed a response contending that the evidence was sufficient to support the determination of the hearing officer and should be affirmed.

DECISION

Affirmed.

The claimant testified that she worked for the employer on _____, as a tack welder on the night shift whose job duties required her to operate machinery in a sitting position using her legs to push pedals to operate the machine. The claimant asserted that she was standing by a computer when her legs became weak and "she could feel herself falling." She testified that she "felt weak from the type of work that I was doing . . .yes. . . I collapsed." The claimant stated that she reached out to catch herself against another piece of equipment but could not do so and collapsed, hitting the floor, hitting the right side of her hip, and ending up in a sitting position. She was transported to the local hospital, evaluated and released. The claimant denied that the hospital personnel told her that she was diagnosed with a low potassium level and leg muscle spasms. The claimant contended that she was told not to return to work until she saw her own doctor. The claimant contended that she injured her legs, back, neck, and right elbow when she fell to the floor.

The claimant testified that she returned to work on _____, and was fired. She asserted disability through March 18, 2000, when she took a job with another employer.

Mr. G testified that he was the claimant's supervisor and that he terminated the claimant on _____. He explained that prior to _____, the claimant had problems with attendance, taking long breaks, not "pulling her share of the load," and that she had a poor attitude for which he was required to provide counseling and transferred her to other job positions on at least three occasions.

Mr. G testified that he saw the claimant sitting on the floor and, when he approached her, she told him that her legs were hurting, but did not mention that she had pain in any other part of her body. Mr. G stated that he tried to call the claimant at home after her release from the hospital but she would not return his telephone calls. Mr. G stated that during a meeting held on _____, and prior to the claimant being told that she was fired, the claimant did not contend that she had sustained any injury to her back, neck, or hip. Mr. W, the manufacturing manager, testified that he fired the claimant and, that during the meeting with her, she never contended that she had sustained an injury, but that she

had become weak because of medication which she had been taking. Mr. W stated that the claimant did not assert an injury until sometime after the date she was fired.

Ms. Gr, a coworker, testified that she did not know the claimant but noticed her earlier in the day having difficulty and that she appeared to be sick. Ms. Gr stated that she asked the claimant if she was all right and the claimant told her that she was sick but could not go home because she already was in jeopardy of losing her job. Ms. Gr explained that later she decided to check on the claimant and saw the incident take place. She testified that she saw the claimant leaning against a wall or a large machine and then slowly sliding down to the ground in a sitting position. When she approached, the claimant told her that her legs were hurting and cramping. Ms. Gr testified that she stayed with the claimant until others arrived on the scene.

Ms. K, another coworker, testified that she did not see the claimant until she was already sitting on the floor but approached the claimant to help her into a prone position and stayed until the paramedics arrived. Ms. K stated that she rubbed the claimant's legs, but did not hear the claimant complain about anything else.

Medical records from the hospital dated _____, reflect that the claimant was treated for leg cramps and a low potassium level. The claimant was released from work until _____. Other medical records reflect that prior to _____, the claimant was being treated for stress, nausea, and diarrhea.

The claimant was treated by Dr. S on November 17, 1999, for complaints of pain and throbbing in her left lower extremity from persistent hypokalemia (low potassium). The report contains a statement from Dr. S, that the claimant "does not give any history of falling down, or injuring her left lower extremity including the knee." Dr. S diagnosed a low potassium count, left lower extremity pain with etiology unknown (as he could not find clinical evidence to substantiate the complaints of pain), and ruled out a blood clot in the left leg. Doppler testing performed on November 16, 1999, was negative.

The claimant sought treatment with Dr. F, a chiropractor, on December 1, 1999, whose records reflect that the claimant reported that she fell at work when her legs gave out and she hit her elbow on the machine and right hip and buttocks on the floor. Dr. F diagnosed a traumatic injury to the cervical, thoracic, and lumbar spine, bilateral hip sprain/strain, right elbow sprain/strain, and headaches and prescribed chiropractic therapy through May 5, 2000. By letter dated May 12, 2000, Dr. F opined that the claimant would need another year of chiropractic therapy.

The hearing officer considered and weighed the evidence and concluded that the claimant was not injured in the course and scope of employment on _____, and that because she did not sustain a compensable injury, she did not have disability. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of

a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it 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 could 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).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Kenneth A. Hutchton
Appeals Judge

Robert W. Potts
Appeals Judge