

APPEAL NO. 002637

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 October 19, 2000. With regard to the four issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable left ankle, left leg, and lumbar spine injury on _____; that the claimant did not have disability; that the claimant failed to give timely notice of her alleged injury and failed to show good cause for failing to do so; and that the claimant did not make an informed election of remedies. The hearing officer's determinations on the election-of-remedies issue have not been appealed and have become final pursuant to Section 410.169.

The claimant appeals the issues of injury, disability, and timely notice, reiterating her testimony from the CCH and arguing that a medical report excluded for failure of timely exchange should be admitted because she "should not be penalized for the mistake of my doctor's office" for failing to promptly send the report. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeal file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant was employed as a "bagger" and also had clean-up duties assigned to her by the employer grocery store. The claimant testified through an interpreter that on _____, as she was waxing the floor, she slipped and fell. The claimant testified that the fall was witnessed by Mr. V, a manager, and the security guard. The security guard could not be located and Mr. V, in a transcribed statement, denied seeing the claimant fall but stated that "she probably fell down and she probably didn't think nothing of it." The hearing officer comments that "[i]t appears to be undisputed that Claimant did slip and fall on _____ while waxing the floor at work." The claimant agrees that she did not report an injury at the time because she believed Mr. V saw her fall. Whether the claimant reported an injury to another supervisor a few days later is in dispute.

The claimant saw a number of doctors. Dr. B, a chiropractor, in a report dated November 17, 1999, recited that the claimant was seen for "severe ankle pain with no known onset of injury. She indicated that she has been feeling this pain for about a month now." Other doctors diagnosed arthritis and chronic symptomatology. An x-ray report of February 22, 2000, suggests an ankle injury "secondary to old trauma." Dr. G, a chiropractor, the claimant's current treating doctor, first diagnosed a low back injury in May 2000.

The evidence is conflicting and subject to differing interpretations. 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).

Because we are affirming the hearing officer's determinations of no compensable injury, the claimant cannot, by definition, have disability.

Regarding the exclusion of Dr. G's report for lack of timely exchange, we have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see also Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We find no abuse of discretion in the hearing officer's application of the exchange of evidence rules.

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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge