

APPEAL NO. 002710

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 19, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. In her appeal, the claimant essentially argues the those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. At the hearing the parties resolved an issue as to the claimant's average weekly wage (AWW) by agreeing that her AWW is \$238.68.

DECISION

Affirmed.

The claimant testified that she injured her back, neck and right arm lifting a large cart of food in the course and scope of her employment on _____. She stated that she did not realize that she had hurt herself until the evening of _____, and that she did not report her injury on May 12, 2000, because she thought it would go away. She testified that she reported her injury at the end of her shift on May 15, 2000. Mr. C, the employer's general manager, testified that he first learned that the claimant was alleging a work-related injury at the end of the claimant's shift on May 15, 2000. Mr. C stated that when the claimant reported the injury to him she indicated that she thought she had injured herself at work but that she could not provide any specifics about what had caused her injury or when it had happened. In addition, Mr. C testified that he questioned the validity of the claimant's claim because her 90-day probationary review period was approaching and she had had several performance problems. In addition, Mr. C stated that he questioned whether the injury was legitimate because the claimant did not report her injury immediately in accordance with the policy of the employer and the client company for whom it provided catering services. Ms. W, the claimant's immediate supervisor, also testified about the claimant's performance problems and the fact that Ms. W had previously counseled the claimant about those problems. The claimant denied that she had been counseled for personnel or job performance issues prior to reporting her injury.

The claimant contends that the hearing officer's injury determination is against the great weight of the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where, as here, there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Reviewing the hearing officer's determination that the claimant did not sustain a compensable injury under that standard, we find no sound basis to disturb the challenged determination on appeal because the hearing officer was acting

within her province as the fact finder in rejecting the claimant's testimony and the other evidence tending to support the existence of an injury.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she 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:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge