

APPEAL NO. 010770

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 March 14, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and so did not have disability from August 19, 2000, to the date of the CCH. The claimant appeals on sufficiency grounds and seeks reversal. The respondent (carrier) responds and asks that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, while, as a temporary employee, she was lifting/stocking cases of rubbing alcohol and witch hazel for a (employer) grand opening. The claimant testified that she injured her back while performing this task in the early afternoon of _____ and that she left shortly thereafter, around 3:00 p.m., after having notified the acting manager, Ms. B, of her injury. Ms. B testified that the claimant did not speak to her about incurring an injury on _____, but did display anger and disappointment upon finding out on that date that she was not going to get permanent employment with the store. Ms. B testified that the claimant demanded her paycheck that day before she left and that she left before her shift was completed. The next morning, Ms. B testified, the claimant called and claimed that she had injured her back the day before and needed to know the workers' compensation claims process. Both Ms. B and a coworker testified that on _____ the claimant did not tell them, nor did they see indicia, of her having injured her back.

The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly

unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer did not err in determining that the claimant did not have disability from August 19, 2000, to the date of the CCH. With no compensable injury found, there is no basis upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

For these reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge