

APPEAL NO. 011236
FILED JULY 11, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 24, 2001, with the record closing on May 10, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from November 11, 2000, through the date of the hearing. The appellant (carrier) has appealed, asserting in essence that the claimant's evidence is not credible. The claimant's response urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed as reformed.

We note at the outset that the hearing officer's decision reflects that one of the claimant's witnesses was named Mr. MOR when, in fact, that witness was Mr. MOS. The decision is reformed accordingly.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that she had disability from November 11, 2000, through the date of the hearing. The claimant testified that, while working as a manager at a restaurant on _____, a job requiring a number of physically demanding tasks, she tripped on a rug as she turned away from a customer and fell onto her knees, injuring her back and right knee. She conceded to having had previous injuries to her back and to the knee but asserted that she was not having problems when she started this job in May 2000 and her evidence reflected that she had not missed work due to prior injuries before _____. Ms. A, the customer the claimant had just served when she fell, testified to having seen her fall and Mr. MOS testified that he saw the claimant on her knees when he exited the restroom. The claimant testified that she has not worked since the accidental fall and her medical records reflect that Dr. M had her off work as of December 7, 2000.

The disputed issues presented the hearing officer with questions of fact to resolve and it is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and who, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb that challenged factual 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 and we do not find them so in this case. 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 decision and order of the hearing officer are affirmed, as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge