

APPEAL NO. 012230
FILED NOVEMBER 12, 2001

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 July 12, 2001, and was continued to and concluded on August 21, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that good cause does not exist to relieve the claimant of the effects of the agreement signed on February 16, 2001; and that the claimant did not have disability from June 24, 1999, through July 7, 1999, or from April 1, 2000, through November 30, 2000. The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

CLAIMED INJURY OF _____

The carrier accepted liability for a compensable injury that the claimant sustained at work on _____, when she slipped in a puddle of water and fell. The claimant claimed that she also sustained a compensable injury on _____, when she slipped in a puddle of water at work and fell. The claimant had the burden to prove that she was injured in the course and scope of employment on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). While the hearing officer was persuaded that the claimant slipped and fell at work _____, she was not persuaded that the claimant sustained an injury, as defined by Section 401.011(26), in that accident. The hearing officer did not find the claimant's testimony credible regarding the occurrence of an injury on _____. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant did not sustain a compensable injury on _____, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

AGREEMENT OF FEBRUARY 16, 2001

In evidence is a Benefit Dispute Agreement (TWCC-24) dated February 16, 2001, which is signed by the claimant, a carrier's representative, and the benefit review officer. The agreement pertains to a disputed issue of disability as a result of the compensable injury of _____. The agreement provides that the parties agree that the claimant sustained disability as a result of the _____, compensable injury beginning on December 1, 2000, and continuing to "the present," and that there was no disability prior

to December 1, 2000. The agreement also provides that the claimant agrees to go to a carrier-selected required medical examination doctor. The claimant claimed that she has good cause for being relieved of the effects of the agreement regarding disability resulting from her compensable injury of _____, and testified that she signed a blank agreement, and that no one explained the agreement to her. The benefit review officer who presided at the February 16, 2001, benefit review conference (BRC), and who signed the agreement, and a carrier's representative who attended the February 16, 2001, BRC, and who signed the agreement, provided testimony which directly contradicted the claimant's testimony. Again, the hearing officer did not find the claimant's testimony credible. As previously noted, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer's decision that good cause does not exist to relieve the claimant of the effects of the agreement signed on February 16, 2001, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Cain, supra*; Section 410.030(b); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(d)(2) (Rule 147.4(d)(2)).

DISABILITY

The disability issue was whether the claimant had disability from June 24, 1999, through July 7, 1999, and from April 1, 2000, through November 30, 2000. The hearing officer determined that the claimant did not have disability from June 24, 1999, through July 7, 1999, or from April 1, 2000, through November 30, 2000. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Because the claimant did not sustain a compensable injury on _____, the claimant would not have disability, as defined by Section 401.011(16), as a result of that claimed compensable injury.

With regard to the compensable injury of _____, Finding of Fact No. 30 states that the "Claimant is estopped by the agreement dated February 16, 2001, from claiming any disability regarding the compensable injury of _____." Since the hearing officer determined that the claimant does not have good cause to be relieved of the effects of the agreement of February 16, 2001, that agreement is binding on the claimant, as well as the carrier, and thus the disputed time period of April 1, 2000, through November 30, 2000, is covered by that part of the agreement wherein the parties agreed that the claimant did not have disability as a result of the compensable injury of _____, prior to December 1, 2000. However, Finding of Fact No. 30 is in error to the extent that it would preclude the claimant from claiming "any disability" resulting from the compensable injury of _____, and thus we reform Finding of Fact No. 30 to reflect that the agreement of February 16, 2001, precludes the claimant from claiming disability as a result of the _____, compensable injury, prior to December 1, 2000.

OTHER MATTERS

The claimant did not object to holding the second session of the CCH in (city), Texas, and thus we do not consider that complaint for the first time on appeal.

The claimant complains that the hearing officer denied her request for a subpoena for medical records; however, since there is nothing in the CCH record to show that such a request was made or denied, there is nothing for us to review on appeal with regard to this complaint.

The claimant contends that she timely filed her claim for compensation for her claimed compensable injury of _____. The issue regarding timely claim filing was withdrawn because the parties stipulated that the claimant had good cause for failing to timely file her claim for compensation. Thus, there is nothing for us to review with regard to this assertion.

The claimant complains about attorney's fees. No issue was presented at the CCH with regard to attorney's fees and the hearing officer's decision and order of August 31, 2001, does not address attorney's fees. Consequently, we do not address attorney's fees for the first time on appeal. We note that the two attorney's fees orders that are attached to the claimant's appeal, which appear to relate to the claimant's attorney's fees, predate the date of the CCH by several months, and that there is no indication that the claimant requested a CCH to contest those fees within the 15-day time period provided by Rule 152.3(d). We also note with regard to the claimant's assertion that she has been ordered to pay the carrier's attorney's fees that no such order is in the CCH record and that there is no statutory or rule authority for ordering a claimant to pay the carrier's attorney's fees.

The hearing officer's decision and order, as reformed herein, are affirmed.

The true corporate name of the insurance carrier is **PAULA FINANCIAL CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC LAWYERS INC.
100 CONGRESS AVE., # 100
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge