

APPEAL NO. 012526
FILED DECEMBER 5, 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 was held on September 27, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appealed on the grounds of sufficiency of the evidence, and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that she sustained an injury to her left wrist and left arm on _____, while lifting a box of glasses at work. It was the claimant's testimony that she felt a pop in her left arm and experienced immediate pain. The claimant stated that she reported the injury to her manager a few days later. The claimant submitted into evidence medical records from her treating doctors, which reveal various bilateral upper extremity problems; however, the claimant was very clear that she is only claiming an injury to her left wrist and arm. She further stated that her doctor has had her off work since she was first treated on August 5, 2000. The carrier contended that the claim is a spite claim, filed because the employer denied the claimant time off when her daughter went into labor.

The claimant had the burden to prove that she was injured in the course and scope of her employment and that she had disability. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of the testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175,

176 (Tex. 1986). The hearing officer clearly had problems with the claimant's credibility.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge