

APPEAL NO. 021159
FILED JUNE 26, 2002

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 April 17, 2002. With regard to the issues before her the hearing officer determined (1) that the respondent/cross-appellant (claimant) was not engaged in horseplay at the time of her injury on _____; (2) that the claimant sustained "a compensable neck injury (sprain only)"; and (3) that the claimant has not had any disability.

The appellant/cross-respondent (self-insured) appealed the horseplay and compensable injury determinations on the basis that "the *undisputed* evidence proves that the Claimant was engaged in horseplay . . . [and] as a matter of law the evidence cannot support" the claimant's theory. The claimant, in documents both timely as a response to the self-insured's appeal and as an appeal, responds and appeals the hearing officer's determination on disability. The self-insured filed a response to the claimant's appeal.

DECISION

Affirmed

The claimant was employed as a corrections officer at one of the self-insured's facilities. It is fairly undisputed that on _____, another corrections officer, RB, reached through some bars, grabbed the claimant by the straps on her vest, and pulled her against the bars. This incident was witnessed by one or more other corrections officers. In serious dispute are the circumstances of this event, whether it was triggered by the claimant's actions, whether the vest had "tear away" straps, other circumstances, and what was RB's motive. Both parties at the CCH commented that this case was a question regarding the credibility of the witnesses and we agree.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the hearing officer's determinations on disability, the hearing officer made it clear that she believed the medical evidence showed that the incident caused the claimant "at most to sustain a mild neck sprain." The hearing officer determined that the claimant sustained "some slight harm to her neck" and did not have disability as

defined in Section 401.011(16). In evidence are some medical reports releasing the claimant to light duty. The claimant, in her appeal, alleges that a “prudent physician” would have referred the claimant to a specialist for a more definitive diagnosis. Also, in dispute is the availability of light work at another position with the self-insured. We hold that the hearing officer’s determination on disability is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer’s decision.

The hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
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P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Michael B. McShane
Appeals Judge