

APPEAL NO. 033211
FILED JANUARY 20, 2004

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 November 5, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, "or at any other relevant time"; that the claimant had good cause for failing to submit to the required medical examination (RME) on August 14, 2003; and that the claimant has not had disability.

The claimant appealed, contending that the hearing officer's decision regarding the compensable injury is "unsupported by any evidence in the record." The respondent (carrier) responds, urging affirmance. The hearing officer's determination on good cause for failing to attend the RME has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

This case turns almost entirely on the credibility of the witnesses and the evidence. The claimant contends that she sustained a neck and shoulder injury while working on the "candy line" in the employer's warehouse on the evening of _____. The claimant was being trained on the candy line by a coworker who testified that no incident occurred. Whether the claimant was struck by some falling boxes of candy or cough drops, or jerked her head to prevent being hit was in dispute and subject to different versions. A DVD video of someone who purports to be the claimant was taken on June 28, 2003, showing that person lifting and carrying a child. The claimant testified that the person was her cousin rather than her. The claimant's immediate supervisor testified that the claimant reported her alleged injury after having been verbally counseled about her job performance. The hearing officer found the claimant had not sustained an injury based on the coworker's and supervisor's testimony.

The question of whether the claimant sustained a compensable injury, and whether she had disability, presented questions of fact for the hearing officer to resolve. 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 may believe, all, part, or none of the testimony of any witnesses. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Clearly the hearing officer was in a better position to evaluate the DVD video than we are on appeal. The hearing officer was acting within his province as the fact finder

in resolving the conflicts and inconsistencies in the evidence against the claimant. 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). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 78251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge