

## APPEAL NO. 950441

On February 10, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (claimant) appeals the hearing officer's decision that she did not sustain a compensable injury on (date of injury). The respondent (employer) requests affirmance.

### DECISION

Affirmed.

The claimant testified that on (date of injury), she was up on a three foot platform at work moving poultry from one line to another when she accidentally stepped off the platform and fell on her back and buttocks on the concrete floor. She said that practically everyone saw her fall, that a government inspector shut down the line, that she was unable to walk so she was taken to the employer's first aid station on a stretcher, and that she was then taken to a hospital emergency room. (SP) gave a statement that she worked the same shift as the claimant and that the claimant fell off the line on (date of injury). (JS) gave a statement that she is a former employee and that the claimant fell off the line to the floor on (date of injury) and was injured. (PS) gave a statement that he "was there when [claimant] fell off platform on back on concrete floor beneath her." (IC) gave a statement that the claimant "fell backwards off pedestal at [employer]." (SPA) gave a statement that the claimant was injured on (date of injury) when she stepped off a platform at work and landed on her buttocks and back.

(MH), the employer's nurse, reported on (date of injury) that the claimant was brought to the first aid room on a stretcher, that the claimant told her that she had "stepped off the platform with one foot and caught self but sat down on left foot," that the claimant's clothes were wet in the buttocks area and on the back of her legs, and that the claimant was complaining of pain in the back, hip, and left leg. She further reported that an examination revealed contusions on the claimant's arm and back that appeared to be several days old and that the claimant told her that the bruises were from fighting. She had the claimant taken to the hospital because of continuing complaints of pain.

(KW), the employer's safety coordinator, gave a statement that she was in the first aid room when the claimant was brought in and that the claimant said that she had stepped off the platform, but did not fall. She stated that the claimant said that she caught herself and sat down and that was why her clothes were wet. She also stated that when the nurse asked the claimant about the bruises on her arm and back, the claimant said that "her boyfriend did it." She said she drove the claimant to the hospital. (EP) gave a statement that the claimant had told her that she had had various physical fights with her boyfriend. The claimant and her boyfriend, (RH), both testified that they never physically fought. MH, the company nurse, reported that on April 19, 1993, RH, who used to work for the employer, told her that an abrasion on his leg was from being hit with a 2 X 4 by the claimant. RH

denied being hit by the claimant and telling MH that the claimant hit him. The claimant said that she did not have bruises; she had birthmarks.

(ML) gave a statement that she was working across the line from the claimant on (date of injury), and that the claimant had one foot on the "stand" and one foot on the floor and was holding on to a railing. She said the claimant stepped out from the stand and walked toward the back of the line and sat down. She said the claimant did not fall. (YM) gave a statement that she heard "R" scream and she saw the claimant with part of her body in the "stand" and with one leg on the floor. She said the claimant was sitting down on one of her feet, but was not sitting on the floor. She said that on April 15, 1994, she saw the claimant dancing at work. (SF) gave a statement that the claimant had one foot on the platform and one foot on the floor and was holding on to the line. She said the claimant hit her chest on the line, but did not fall down to the floor. She said the claimant sat down on the platform. (GG) gave a statement that on (date of injury) he was working about six feet from the claimant and he saw the claimant take a step "about six inches to the floor." He said "she put her feet down and then she strike the pipe but continuously hold the rail here, holding the pipe, put the arm right here. That's it. She didn't hit the floor." (CD) said he saw the claimant fast dancing at work on April 15, 1994.

(TC) gave a statement that the claimant told her sometime after (date of injury), that she had fallen and hurt her back at her part-time janitorial job with another employer and that she was going to make the employer where the claimed injury of (date of injury) occurred pay for that injury. She also stated that she had seen the claimant and RH physically fight. (SM) gave a statement that TC is a "big liar & troublemaker." The claimant said that she had a part-time janitorial job but that she was not injured there. JS stated that the claimant did not get hurt on her second job. SP stated that she worked with claimant at the second job and that the claimant was not hurt on that job. The claimant's supervisor on her second job stated that no injury was reported to him.

(Dr. H) examined the claimant on (date of injury) and he reported that the claimant told him she had fallen off a platform and injured her hip and tailbone. He also reported that x-rays of the pelvis, lumbar spine, and coccyx were negative and he diagnosed "contusions of lower back." He stated that the claimant could return to work without restrictions on April 4, 1994. (Dr. S) saw the claimant on April 5th and he diagnosed low back contusions and reported that the claimant could return to work with light duty for one week. (Dr. C) saw the claimant on April 19, 1994, and he diagnosed a lumbosacral strain, with a possible lumbar disc injury. He stated the claimant could return to light duty work and recommended physical therapy which the claimant undertook. (Dr. HA) reported on September 20, 1994, that a CT myelogram showed slight bulges at L4-5 and L5-S1 without evidence of nerve root entrapment. He diagnosed a lumbar strain and contusion. The claimant testified that other doctors have told her that she has a disc herniation at L4-5 and damage at the S1 disc.

The issue at the hearing was whether the claimant sustained a compensable injury on (date of injury). The hearing officer found that the claimant did not sustain an injury to her back on (date of injury), while at work, and she concluded that the claimant did not sustain a compensable injury.

The claimant has the burden to prove that she was injured in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). In this case there is much conflicting evidence on the issue of whether the claimant was injured at work. The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer can believe all, part, or none of the testimony of any witness, and resolves conflicts in the evidence, including the medical evidence, and determines what facts have been established. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The claimant's testimony only raised an issue of fact for the hearing officer to resolve. 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. Appeal No. 950084, *supra*. 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 decision is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The claimant complains on appeal that her attorney did not do an adequate job in presenting her case. That assertion is not a basis for reversal of the hearing officer's decision. The claimant also complains that none of the carrier's exhibits should have been admitted into evidence. Since there was no objection to the carrier's exhibits at the hearing, we will not consider such objections on appeal. Dicker v. Security Insurance Company, 474 S.W.2d 334 (Tex. Civ. App.-Waco 1971, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge