APPEAL NO. 971784

This appeal is brought 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 June 12, 1997. The hearing officer determined that the respondent (claimant) sustained compensable cervical, lumbar, and right arm (shoulder) injuries as well as left knee and facial injuries on _____; that the injuries were not caused by the claimant's wilful intention and attempt to injure herself; and that the claimant had resulting disability beginning January 19, 1996. The appellant (carrier) appeals these determinations, contending that they are not supported by sufficient evidence.

DECISION

Affirmed as reformed.

The claimant testified that her work-shift began at 7:00 a.m. on _____. She said she arrived at work at about 6:45 a.m., noticed some water on the workroom floor and told Ms. K that it needed to be cleaned up. In a transcribed written statement, Ms. K said she then cleaned up the water. Another co-worker, Ms. J said the claimant told her she was going to lay down by the water and claim a slip and fall and asked Ms. J to be a witness. Ms. J, in a transcribed statement, said she refused to cooperate in this plot. The claimant denied that this conversation took place. Another co-worker, Ms. C said in a transcribed interview that she overheard the claimant tell someone else she almost slipped in the puddle and fell and if it happened she would sue.

The claimant took her morning break at 9:00 a.m. She went outside with Ms. T, a co-worker, and while walking to a food vendor, slipped and fell on ice, thereby sustaining the injuries claimed. Ms. T, in a transcribed interview, said that she believed the claimant staged this fall intentionally because, among other reasons, Ms. T did not fall and the claimant had earlier said she wanted to go home after what Ms. T believed was a fall in the workroom. The claimant never asserted that she fell in the workroom. Mr. JO, the supervisor, who admitted he was not present on the day of the fall on the ice, stated in a transcribed interview that the patch of ice was small and that everyone else was able to walk around the ice.

Section 406.032(1)(B) provides that a carrier is not liable for compensation if the injury was caused by the "employee's willful attempt to injure himself." The carrier contended both at the hearing and on appeal that the great weight of the evidence established an attempt by the claimant to injure herself. It points to a motive (the desire to leave work) and an announcement of her intentions to more than one co-worker, not all of whom could have misunderstood or invented conversations, as well as the circumstances that she had to make a special effort to injure herself as proof that the incident was staged and that the claimant sustained injuries "beyond what she expected." Contrary evidence from the claimant consisted of her denial that conversations with co-workers about staging a fall took place and that she fell on the ice on purpose. Whether the claimant made such

a wilful attempt was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93792, decided October 20, 1993. The evidence of intent in this case was obviously in conflict with the claimant denying that she told her co-workers that she was going to feign an accident and the co-workers asserting the opposite. The carrier pointed out at the CCH that the numerous accounts of the co-workers suggest their version is more credible than the claimant's simple denial of this intent. In addition, the carrier suggested as a motive for the injury, the claimant's desire to leave work. Mr. JO described the claimant as a good worker and the claimant herself testified to how much she enjoyed her work and often worked seven days a week. The hearing officer, as fact finder, was the sole judge of the weight and credibility to be given this evidence. Section 410.165(a). In the discharge of this responsibility he could believe all, part or none of the testimony or other evidence presented. Texas Workers' Compensation Commission Appeal No. 93819, October 28, 1993. He obviously found the claimant more persuasive and credible in her assertions that she did not intentionally fall. Under our standard or review, we decline to reweigh this evidence or substitute our opinion of credibility for that of the hearing officer, but find the evidence sufficient to support the determination that the claimant's injuries were not caused by her willful attempt to hurt herself.

The carrier does not dispute that the slip and fall occurred as claimed or that it produced facial and left knee injuries, but argues that the evidence was insufficient to support a finding of cervical, lumbar, and right shoulder injuries. In support of this position, it points out the first treating doctor, Dr. R, in his Initial Medical Report (TWCC-61) on the date of the injury, mentioned complaints of pain to the left knee, face, and right hand. The claimant testified that after she fell, she felt pain "all over" and described her additional complaints to Dr. R, but for unknown reasons he did not record them. The claimant then sought care from Dr. G, who as a result of a visit on February 9, 1996, diagnosed traumatic myofascitis of the right shoulder, left ankle, and lumbar strain. He referred the claimant to a chiropractor who on February 26, 1996, diagnosed cervical and lumbar sprain/strain, and right shoulder myositis. In its appeal, the carrier asserts that "[i]t was not until the Claimant changed physicians to a chiropractor that she suddenly had injuries to the cervical spine, lumbar spine and right arm." The claimant testified that she changed treating doctors because Dr. R had been selected for her by her employer and she was not satisfied with the treatment he provided. The carrier's contention that the additional injuries were not asserted until diagnosed by a chiropractor ignores the diagnoses of Dr. G, who was not a chiropractor and who referred the claimant to a chiropractor after he, Dr. G, examined her. In any case, whether the compensable injuries included the additional injuries claimed was a question of fact for the hearing officer to decide and could, in this case, be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992. Again applying our standard of appellate review, we find the evidence sufficient to support the hearing officer's determination of this issue and decline to reverse it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

There remains the question of disability. The hearing officer found disability from January 19, 1996, the day after the compensable injury, through November 19, 1996, the day before the claimant began a new full-time job in a new career field. The carrier appeals this determination, contending that the claimant was released to light duty and the employer offered her limited work during this period. It identifies as evidence of light duty, the transcript of Mr. JO's recorded telephone conversation with an adjuster. The carrier unfortunately did not describe where in the transcript the light-duty offer is contained. Presumably it is the following answer to the question, "Okay did she return to light duty?"

> No she did not she was called to come to work but claimed she was unable to work even though she was released for light duty so during the next week we called and she repeatedly refused to come to work . . . I asked her at that time if she would sign a light duty release form . . . and she refused she told me she was not gonna to work until she had seen her own doctor. . . .

Given the lack of any evidence of a written offer and the vagueness of the above, we find no error in the refusal of the hearing officer to find a bona fide offer of employment. *See* Section 408.102(e) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5)).

The carrier also appeals the finding of disability on the grounds that disability should have ended when the claimant began her job search on September 16, 1996, because this demonstrated an ability to earn her preinjury wage, rather than ending disability on the day before she actually started her new job. Whether disability existed was a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer considered this argument of the carrier and was not persuaded that disability ended as proposed. We find the evidence deemed credible and persuasive by the hearing officer on this issue sufficient to

support his finding of disability and decline to reverse that finding. However, while the relevant finding of fact ends disability on November 18, 1996, the relevant conclusion of law and decision find disability through November 29, 1996. The latter date appearing to be in error, we reform Conclusion of Law No. 5 and the Decision to read November 18, 1996, in place of November 29, 1996.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge