APPEAL NO. 990096

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 7, 1998, a hearing was held. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and therefore had no disability. Claimant asserts that she disagrees with the determination of no compensable injury and questions the credibility of two witnesses who testified about her job. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) as a driver for disabled passengers. She referred to her bus as a "Ride" bus. She said that she has worked for employer for about two years. She testified that she assists passengers in wheelchairs onto the bus and regularly "transfers" these passengers from their wheelchairs into bus seats. In addition, she said that she assists passengers on crutches into the bus and helps them to sit down. She testified that on _____, she felt a pain in her right leg that went up to her hip. She reported this and went to (Clinic), where she was seen by a physician's assistant for a muscle strain and "possible exacerbation of her sciatic nerve." She then saw Dr. L in March 1998 for "chronic muscle spasm right leg and back." Dr. O, D.C., testified that he first saw claimant at the end of March 1998.

Dr. O further testified that claimant provided a history of repetitive lifting with severe pain on _____. He added that repetitive trauma could occur from only two instances a day over a period of several weeks. He also described repetitive "weakening" of the back and "the straw that broke the camel's back" as together resulting in injury. He added that claimant told him of lifting four to seven people in her 16-hour-a-day work, but he then asserted that he would have the same diagnosis if claimant had lifted just one person and hurt herself. He said that claimant has an "initial disk strain with the MRI confirming a bulge"; the secondary diagnosis was muscle strain of the low back and buttock. He stated that claimant has a repetitive trauma injury. (An MRI provided in October 1998 was reported as showing a "mild posterior bulging of the annulus at L4-5" but with that disc otherwise appearing normal, and the MRI was "otherwise normal.") A surveillance video of claimant clearly showed her walking with a limp.

Claimant testified that for the three months preceding _____, she worked "16, 17 hours" a day. She acknowledged, however, that on the morning she felt pain in her right leg while driving, she had not had any passengers in wheelchairs that day but had assisted one passenger on crutches. She said that she assisted seven people a day. She said that she transferred three wheelchair passengers a day from the wheelchair to a bus seat; this entailed lifting. (More wheelchair passengers were simply "transported" from point to point by staying in the wheelchair during the bus ride.) Claimant said that manifests of

passengers transported per day were not complete because of "add-ons" that would occur during the day. She said these occurred three to four times a week. Claimant had no explanation why, in reviewing the manifests from the date of injury, _____, back, that the first "add-on" sheet did not occur until Janaury 16, 1998. Claimant also said that she had "six or seven" add-ons a week. Claimant had indicated that the "add-ons" would make up the difference regarding the number of people she transferred from a wheelchair to a bus seat (three a day she said) when the manifests showed less than three wheelchair passengers were even transported on some days.

Ms. E testified that during the past three years she worked as a driver, claimant's job, for two and one-half hears, while the last six months she has been a part-time supervisor, but still drives occasionally. When asked how many wheelchair passengers she transferred a day, she replied that she transferred a wheelchair passenger "once" in all the years that she was an "operator." She added that even if a passenger asked to be transferred, she was not supposed to do it unless it was so coded on her manifest, because the time taken to perform an unscheduled transfer would delay scheduled stops for other passengers. She added that to assist people on crutches, a driver stood behind the passenger as he or she stepped up into the bus to enter and would steady or even hold a passenger if a fall backward appeared imminent. No passenger has ever started to fall that she had to catch, and she has never heard of anyone having to catch a falling passenger. She said no passengers ever grabbed her around the neck to steady themselves as they sat down because there are "bars" around the van to hold.

Mr. W testified that he supervised the collection of the manifests that were in evidence. He did not recall claimant having worked any double shifts.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He stated in his Statement of Evidence that "credible evidence" showed that lifting of passengers from wheelchairs to bus seats "rarely if ever occurred." The hearing officer also commented that the claimant did not show the degree of physical activity that Dr. O stated she indicated to him. He noted that claimant was not persuasive in maintaining that an injury occurred at work. Upon review we conclude that the evidence was conflicting as to the number of times lifting was required. As fact finder, the hearing officer could give more weight to the testimony of Ms. E and to the manifests in evidence than he did to claimant's testimony, especially upon noting a question of credibility. This case essentially involved a factual determination as to whether injury occurred on the job; the evidence sufficiently supports the hearing officer's resolution of the question. As stated, the hearing officer did not find that claimant has no injury but that she did not show that her injury was compensable. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ).

With the evidence sufficiently supporting the determination that no compensable injury, in the form of an occupational disease, was shown, there can be no disability. *See* Section 401.011(16).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Alan C. Ernst
Appeals Judge