

APPEAL NO. 990216

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 15, 1998, a hearing was held. He (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, did not timely report her injury without good cause for being late in giving notice of injury, and did not have disability. Claimant asserts that she sustained a stress fracture at work "due to lack of rubber floormat," that she told her supervisor the day of the injury, and that she does have disability. Respondent (store) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant testified that on \_\_\_\_\_, while working in the pharmacy of (employer), she felt her foot pop while walking, adding that she was "simply walking" with no turn, twist, or fall involved. She stated that when it popped, she said, "oh my foot popped," she also said that she told her supervisor, Mr. W, that her foot popped. She stated that Mr. W "kiddingly" replied, "well I guess you can file workers comp." She stated that nothing more was said or done at that time. The foot hurt that night and continuously after \_\_\_\_\_, she said. She saw Dr. W on October 30, 1997, and said that he took her off work on December 22, 1997, after a bone scan was done. She added that Dr. W told her that her stress fracture was "from walking, just the stress from walking and standing." She took the "off work" note to Mr. M, the store manager, on December 22, 1997, and told him that it was a result of her foot popping. Claimant also testified that a pad covered the entire pharmacy area, but she said a sewer backup problem ruined the pad, which was not replaced, and she was walking on concrete at the time her foot popped.

Mr. W testified that he no longer works for employer. He said that claimant told him of a foot pop but that he did not say anything about workers' compensation, adding that it never crossed his mind. He also stated that he thought the sewer problem that ruined the pad occurred "around Thanksgiving." Mr. M also testified that the pad was in place in \_\_\_\_\_ because the sewer problem occurred in "either late November or early December."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The carrier in its argument cited Texas Workers' Compensation Commission Appeal No. 980631, decided May 14, 1998. Texas Workers' Compensation Commission Appeal No. 983048, decided February 4, 1999 (Unpublished), also cited that case, which had stated that a knee popping injury while walking down a hall without any twisting, turning, or bending, and which involved no instrumentality of the workplace, was not compensable; it reversed a hearing officer's decision that the injury was compensable and rendered a new decision. *Compare* to Texas Workers' Compensation Commission Appeal No. 960307, decided March 25, 1996, in which an ankle injury was compensable when it was found to have resulted from a "pivoting action" at work.

The hearing officer makes no finding of fact relative to the mat. Whether or not a mat was in place would not necessarily determine the outcome of the question of compensability, but the hearing officer could certainly give more weight to the testimony of Mr. M and Mr. W that the pad was still in place at the time of the foot popping. In addition, the hearing officer could give more weight to Mr. W's testimony that he mentioned nothing about workers' compensation when claimant said her foot popped, and in doing so, question the credibility of the claimant. The determination that claimant did not sustain a compensable injury is sufficiently supported by the evidence.

The hearing officer did not consider claimant's statement to Mr. W that her foot popped as providing notice of an injury. There was no evidence that claimant did not work until taken off work in December, and neither Mr. W nor claimant testified that she had trouble working from the foot problem within 30 days of \_\_\_\_\_. Claimant also acknowledged that she brought no doctor's report in prior to the off-work notice of December 22, 1997. As stated, claimant had testified that her pain never stopped after \_\_\_\_\_, and she did seek medical help on October 30, 1997. The determinations that claimant did not provide timely notice without good cause and with no actual knowledge by employer are sufficiently supported by the evidence.

Without a compensable injury, 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).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge