

APPEAL NO. 990286

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 19, 1998, a hearing was held. He determined that appellant (claimant) did not show that she sustained a compensable back injury on _____, but did timely report an injury. There was no disability and claimant's average weekly wage (AWW) was found to be \$305.17. On appeal, claimant takes issue with certain findings of fact and conclusions of law that relate to whether there was a compensable injury and whether disability resulted. There was no appeal as to the notice and AWW determinations. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer), on _____. She testified that on that day she "was stepping back into the water truck when I felt pain in the lower part of my back." She said that the next day she told a supervisor that she had pain in her back, that she did not know what it was from, and that she thought it was arthritis.

Medical records provided indicate that she went to an emergency room (ER) on September 3, 1998, presenting with pain in the low back and buttocks, giving a history of a sharp pain for two days, but not describing any specific injury. Her acute pain was described in the record at this time as consistent with a strain.

On September 8, 1998, records of Dr. M note a history of pain in the lower back upon awakening one week before, adding that she "went to bed feeling fine and woke up with the pain." Dr. M diagnosed a sacroiliac fibrositis with the cause unknown.

Both Mr. P and Mr. K testified that they are supervisors of claimant. Neither testified that claimant ever related the condition to work. Mr. P also related that claimant was told that she had to obtain a doctor's release to return to work and did not; she was terminated on September 9, 1998. Mr. P questioned why claimant never provided them with the release that she said she obtained from the ER. Mr. P learned of an injury, he said, when the Texas Workers' Compensation Commission communicated with employer about it, after claimant had been terminated. Mr. K testified that claimant had a problem with attendance at work prior to _____, the date of the alleged injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. When there is conflicting evidence such as between claimant and Mr. P and Mr. K, the hearing officer determines which, or what part of certain testimony, receives more weight than other testimony. See Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

The hearing officer could consider reports in medical records that were made part of the record and, in doing so, could give weight to a history that recorded nothing about claimant's having felt pain as she was stepping into a truck. While a claimant's testimony as to the manner in which an accident occurred may be the basis for a determination of a compensable injury, the hearing officer is not compelled to accept her testimony, especially in light of all other evidence which may be considered as not indicative of a compensable injury. See, *generally*, Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ).

The Appeals Panel is not a fact finder and will not overturn the hearing officer on a factual determination unless that determination is against the great weight and preponderance of the evidence, which is not present in the case under review. The determination that claimant did not sustain a compensable injury is sufficiently supported by the evidence. With no 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).

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge