

APPEAL NO. 990725

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On February 23 and March 23, 1999, hearings were held. She determined that appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and had no disability. Claimant requests review of the hearing officer's decision. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, the date of an alleged injury. At the time of the incident, claimant was one of two workers feeding plastic glasses into, and retrieving embossed plastic glasses from, a machine.

At about 2:00 p.m. on \_\_\_\_\_, NG testified that he was pushing a pallet jack filled with boxes of plastic glasses in the vicinity of claimant and her machine. Each box was about 13 inches by 18 inches by 22 inches and weighed 17 pounds. Behind claimant several boxes of plastic glasses were stacked about four to five feet high. NG said that a fork of his pallet jack hit the stacked boxes by claimant. He restrained the boxes on the pallet jack; he said that he kept all of those boxes from falling to the floor. It was not clear from the questions and answers given whether NG was saying that he kept all boxes from falling or only the boxes on his pallet. After saying that five or six boxes were stacked on the floor behind claimant, he answered a question asking whether "any of the boxes that fell" struck claimant, by answering, "No". NG's prior statement was consistent with his testimony; however, it was not entirely consistent with the testimony of CV .

The worker at the machine with claimant was JG. She testified that she saw one box fall on \_\_\_\_\_. When referred to her prior statement, she denied saying that boxes fell to the floor, adding that there were boxes stacked on the floor behind claimant. She said that the box that fell landed on a table. She added that she saw no box strike claimant and then stated that, from her position about three feet away from claimant, she would have seen one strike her if it had. JG stated that she worked at the machine in question with claimant about eight months at the time of the incident. According to JG, both of them stood throughout the day as they ministered to the machine. She denied that she told CV that a box hit claimant. Her prior statement indicated that "some hit the floor where the rest of the boxes were." That statement also said she saw no box hit claimant, but later in the statement she said, "I didn't think that they hit her that much."

CV testified that she is claimant's supervisor. Claimant approached her on \_\_\_\_\_, and told her that NG "had hit her with some boxes." She said that NG told her he struck boxes stacked behind claimant and "one box fell off the top." She added that NG

said the box did not hit claimant, but fell to the floor. She also testified that claimant had reported a box of plastic glasses had fallen on her neck in February 1998.

EV testified that she is an employee of employer who knows the claimant. When she filled in for claimant when claimant did not return, she worked with JG, who, she said, answered, "Yes" when she asked if she saw the boxes fall on claimant.

The various reports of doctors seen by claimant indicate that claimant reported being struck by falling boxes or possibly being struck by NG as he was passing her area. No medical history reports that claimant hurt her back when she twisted around to see what was going on when boxes fell on \_\_\_\_\_. Dr. A reported that claimant had pain in her neck and low back with spasm and limited movement. He added in January 1999, "the accident of \_\_\_\_\_ was the incident on the job that caused the ruptured disc of L5-S1 to become symptomatic." He also said that "since there was no previous symptoms of back pain or injury to her back," his opinion was based on reasonable medical probability. An MRI of June 4, 1998, said that claimant at L5-S1 had a "disc substance protrusion or herniation"; it also alluded to "drying or desiccation of disc substance."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. As fact finder, she resolves conflicts in the evidence. She recited claimant's testimony about boxes falling on her and twisting around to see what happened at which time she felt pain in her low back. The hearing officer stated, however, that she found both NG and JG to be credible witnesses; both testified that claimant was not hit by any falling box. We note also that there was testimony that the size of the stack of boxes behind claimant would make it hard for a box to have hit her in her head or neck, as she testified, since there was also testimony that she was standing at the time. In addition, no medical record refers to any twisting motion in regard to injury. It was for the hearing officer to determine credibility. She could choose to believe some of the testimony and not believe all of the prior statements of both NG and JG. We cannot say that the determination that claimant did not sustain a compensable injury on \_\_\_\_\_, is against the great weight and preponderance of 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).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge