

APPEAL NO. 990822

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 25, 1999, a hearing was held. He determined that appellant (claimant) did not sustain a compensable injury on _____, and has not had disability. Claimant asserts that she did sustain a work-related injury and points out that the benefit review conference (BRC) officer believed her. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). She worked in an office of an apartment building. Claimant testified that on the morning of _____, she moved a very heavy helium tank in order to blow up balloons; the tank was said to have started to fall when being rocked into position; claimant said that she caught it but in doing so injured her shoulder, arm, and neck. Claimant stated that when her supervisor, LB, called her into LB's office later that morning, about 10:30 a.m., and told claimant she was fired, claimant said she told LB, "you seen me when I got hurt" before she left the office.

LB testified that she called BL, the lead maintenance man, into the office at the time she terminated claimant on _____. She also said that claimant said nothing about being injured, but claimant did say, "you will be sorry." With a large window in LB's office across from claimant's work area about 10 feet away, LB said that she would have seen a falling helium tank, that the tank was not out of the closet, and did not have to be moved out to blow up balloons.

BL testified that LB called him into her office just before telling claimant she was terminated. He said claimant was "peevied" when told she was terminated. He recalled that claimant then said something like, "we would be sorry" or "we would regret it," but he answered "no" when asked if claimant had "indicated" that she had been injured. He also said that she did not appear to be hurt. He added that later in the day, when he was in the office area, LB called him over and said that claimant had called (after she was terminated) stating that she had been hurt when she was inflating balloons. He too, said that the tank did not have to be removed from the closet, but he added that it may have to be turned.

Claimant went to an emergency room on _____. Notes therefrom indicate a history of having lifted a heavy cannister resulting in pain in the shoulder, chest, and back. An acute thoracic sprain/strain was the impression with the words, "history lifting injury" immediately thereafter. A triage nurse's notes of 2220 (10:20 p.m.) state claimant's complaint to be "shoulder and back pain x 5 hours ago." (Five hours before 10:20 p.m. would be about 5:00 p.m., rather than early in the morning before 10:30 a.m.)

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. He pointed out in a finding of fact that claimant's testimony was inconsistent with other evidence in several areas, including the report to the triage nurse and the manner in which she first reported the injury. He then found that claimant had not shown that she was compensably injured. This determination is sufficiently supported by the evidence.

Claimant points out that the BRC officer believed her account. The BRC is an informal dispute resolution proceeding (see Section 410.021), which is a prerequisite to the contested case hearing (see Section 410.024). The benefit review officer is to mediate disputes, but has no power to decide a case. *Compare to* Section 410.168, which makes contested case hearing officers responsible to "issue a written decision," including to "award benefits due." When the hearing officer reaches a decision, that decision may be appealed to the Appeals Panel.

The Appeals Panel is not a fact finder; as stated, the hearing officer is the sole judge of the weight and credibility of the evidence. The Appeals Panel will not overturn factual determinations of a hearing officer, such as were made in this case under review, unless those determinations are against the great weight and preponderance of the evidence. In this case, the hearing officer's determinations were not against the great weight of the evidence. Rather, the hearing officer was faced with conflicts in the testimony between witnesses which he then had the duty to resolve; he was also faced with inconsistencies between claimant's testimony and her statement. He resolved these questions by finding that claimant had not shown that she was injured at work.

With no compensable injury, there can be no disability under Section 401.011(16), which provides for disability only when there is a compensable injury.

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:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge