

APPEAL NO. 991090

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 14, 1999. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was working as a bus driver for (employer) and had been so employed for about a year. She stated that she was stopped at a stoplight waiting to turn left, when a car struck the right front door and right front fender of the bus. A police officer was stopped at the light behind the bus at the time of the accident. His report confirms that the driver of the car in the right lane attempted to turn left in front of the bus being driven by the claimant and that his vehicle struck the right front of the bus. The claimant testified that the bus shook, her shoulders and her hips moved, and her buttocks came out of her seat on impact. The claimant stated that she developed pain from her neck all the way down the right side of her back shortly after the incident. She testified that although she was hurting, she was required to drive the bus back to the yard, which took approximately two hours. She stated that her pain got progressively worse as she was driving and that she had to ask another driver to help her climb down from the bus when she got back to the yard because she was not able to do so, secondary to her pain.

The claimant was sent to a clinic by her employer on the date of her injury. She was diagnosed as having lumbar and sacral strains and was released to work with restrictions of no repetitive lifting over 10 pounds, no bending more than five times per day, and no pushing/pulling over 20 pounds of force. Records of the clinic reflect that the claimant was returned to driving on November 20, 1998. She acknowledged that she was "forced" to work from November 20 to November 27, 1998.

On November 30, 1998, the claimant began treating with Dr. M, to whom she was apparently referred by her attorney. Dr. M diagnosed cervical and lumbar sprains. He took the claimant off work at her initial appointment and kept her off work until February 10, 1999. The claimant's employment with the employer was terminated on November 30, 1998; however, the claimant testified that she did not learn of her termination until after Dr. M released her to return to work. Thereafter, the claimant applied for and received unemployment compensation, acknowledging that she received back benefits for the period from December 1998 to February 1999.

DS, Ph.D., testified at the hearing that he was hired by the carrier to perform an accident reconstruction and to have a biomechanical analysis done to determine the possibility that the claimant sustained an injury in the accident. DS noted that the bus the claimant was driving weighed 40,000 pounds and that the car that struck the bus weighed 2,380 pounds. DS noted that there was no direct impact in the collision; rather, the car "side-swiped" the bus. DS concluded that, at most, the bus experienced a combined deceleration and lateral speed change of two miles per hour in the accident. JL also testified at the hearing, stating that he was involved in the preparation of the accident reconstruction report. JL stated that there was a very low probability that an injury would be sustained where there was a two-mile-per-hour change in speed to the side and rear from a glancing blow such as the one that occurred in this case. JL also testified that the claimant's complaints of right-sided back and neck pain were inconsistent with this type of accident. He explained that an accident such as the one that occurred here, would have caused compression of the right side and stretching of the left side and thus, if the claimant had sustained an injury, it would be more likely that it would have been a left-sided injury.

The hearing officer determined that the claimant was involved in an accident on _____, but, he further determined that she did not sustain an injury within the meaning of the 1989 Act in that incident. Under the 1989 Act, injury is defined as damage or harm to the physical structure of the body. Section 401.011(26). As the claimant noted in her appeal, the hearing officer could have found injury and disability on the basis of her testimony alone. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, he was not required to accept the claimant's testimony; rather, it created a factual question for him to resolve. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence. Section 410.165(a). As such, he was free to reject that testimony and to credit the testimony and evidence from DS and JL that the impact in this instance was unlikely to have caused an injury to the claimant. The hearing officer was also privileged to discount the medical evidence to the extent that it tended to suggest that the claimant had been injured in the _____, accident. He was acting within his province as the fact finder in determining that the claimant did not sustain her burden of proving that she sustained damage or harm to her neck or back in the motor vehicle accident. Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the hearing officer's injury determination, we likewise affirm his determination that the claimant did not have disability because the finding of a compensable injury is a prerequisite to finding disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge