

APPEAL NO. 991247

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 28, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) did not sustain a compensable injury (occupational disease or any other incident) on _____, and therefore had no disability. Claimant disagrees with parts of the Statement of Evidence and states that findings of fact indicating no compensable injury and no disability are in error, citing the comments of the benefit review officer. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant's disagreement with the Statement of Evidence in two areas is understandable; the hearing officer in paragraphs six and seven related what two witnesses said who were not supportive of claimant's testimony. In addition, claimant points out one comment that does cause a question; it relates to paragraph three of the Statement of Evidence; the comment is, "the claimant stated she had prior problems with her wrist hands?" (sic). This sentence makes little sense, especially with the question mark at its end. As will be pointed out hereafter, claimant did have prior shoulder problems but the record does not show prior problems with the wrist or hands. Because of the absence of any finding of fact concerning prior injury to the wrist or hands, because other evidence is sufficient to support the determination reached in this case, and because of the question mark at the end of the sentence in question, we do not find that this sentence in the Statement of Evidence constitutes reversible error. We do correct a date provided in the Statement of Evidence which said claimant had a cortisone shot within ten days of "August 18, 1998"; the cortisone shot was on June 9, 1998, so the date provided should be the alleged date of injury of _____. Any other assertions about the Statement of Evidence reflect different emphasis placed on evidence by the hearing officer as opposed to the claimant.

Claimant worked for (employer). She said that employer deals in used cars and her job involved cataloging and processing (BMW) brand cars. Auctions of these BMW brand cars were held on one Thursday in each month. On those days, claimant said she had to work with envelopes containing books, papers, keys, and telephones relative to the cars to be sold. She said she placed these envelopes, weighing two to five pounds each, in large legal size boxes that weighed approximately 55 pounds. She did not move the boxes from office to office but did have to move them, when stacked on each other, or around the office where she worked. She said that she moved these large boxes on _____. She said that she also used a computer in her work. She "noticed" pain in her shoulders (mostly her right shoulder in answer to the hearing officer). This occurred on a Thursday; she worked Friday and then told her supervisor of the incident on the following Monday.

Ms. T testified that she is the personnel manager for employer. She said on Monday, that claimant came to her saying she had just told her supervisor (apparently about the injury). Ms. T said claimant first told her that her right shoulder was hurting, to which Ms. T asked, "what did you do," to which claimant was said to have replied, "well, I don't know." In that conversation, Ms. T testified that claimant eventually said that "maybe I hurt it Thursday when we was [sic] doing the BMW sale." Ms. T said that claimant continued to work until July 27, 1998.

Claimant's medical evidence later shows some evidence of right carpal tunnel syndrome and cervical radiculopathy. Although a cervical MRI showed no significant pathology, Dr. H said in August 1998 that, in reasonable medical probability, claimant's neck, shoulder, and arm symptoms were caused by, or exacerbated by "the events related to me" and "are directly related to her activities on the job."

Claimant provided a statement from Ms. H, who said that she worked for employer "to June 1998" and, also within the same statement, said that she worked until her maternity leave "in June 98." Her statement says that claimant did "heavy computer work," that claimant moved "these storage boxes around filled with books," and also that she saw claimant lift and stack them.

Carrier provided evidence that claimant complained to her family doctor of pain in her right shoulder on May 14, 1998, and was diagnosed as having tendinitis of the right shoulder. On June 9, 1998 (prior to the alleged date of injury of _____), claimant received a cortisone injection for her right shoulder pain. In addition, when claimant saw Dr. A on June 22, 1998, for the _____, injury, she gave a history of moving boxes of books and ledgers; Dr. A noted under "Significant Past Medical History," "no previous medical history indicated" when the only diagnosis was "shoulder strain."

A co-employee of claimant, Ms. W, stated that she worked in the same room with claimant only a few feet away. She said that she never saw claimant move a box. She added, "we had to do her job" and "she [claimant] wouldn't lift the boxes or anything like that." She said that she and Ms. Mc moved boxes for claimant. According to Ms. W, claimant talked of having back surgery in the past. Ms. W also stated, "she [claimant] wouldn't lift the boxes or anything like that. We had to do it and we got upset about it." Ms. W noted that after she had surgery in April for cervical cancer and returned to work she was moving boxes "that Thursday [for] a BMW sale."

Ms. Mc testified that she worked in the same room with claimant less than 10 feet away. She agreed that she and Ms. W moved the boxes filled with BMW paraphenalia. She never saw claimant lift and move any box. Ms. Mc said that she has had two back surgeries and heart surgery, but noted that claimant said she could not move the boxes because of her back. She saw claimant do nothing on _____, that might have injured her. She added on cross-examination that claimant was not on the computer a majority of the day. In answer to a question as to what did claimant do when she was not on the computer, Ms. Mc said that she spoke on the telephone, "to her husband--or her kids or her

mom or someone." She stated that she did not like claimant because she "could not stay quiet long enough for us to get our work done."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The hearing officer did not have to believe claimant in regard to all her testimony; in her Statement of Evidence, the hearing officer commented that claimant was "not persuasive." As fact finder, the hearing officer could, and did, choose to give significant weight to the testimony of Ms. W and Ms. Mc, as opposed to claimant and Ms. H. She could also credit Ms. T's testimony that claimant was not sure of the etiology of her right shoulder pain and consider that point, along with claimant's prior right shoulder complaints and treatment by injection for the right shoulder less than 10 days before the alleged date of injury. The evidence is sufficient to support the determination that claimant did not show that she sustained an injury caused or aggravated by her work.

With an affirmed determination that no compensable injury was sustained, 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:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge