

## APPEAL NO. 991546

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 990588, decided April 28, 1999. A hearing on remand was held on June 18, 1999. The parties did not offer additional evidence, choosing instead to rely on the evidence presented at the March 8, 1999, hearing. However, the parties made further argument to the hearing officer. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury to her neck, right shoulder, back, tailbone, and left ankle on Injury 1, and that she did not have disability.

In her appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

### DECISION

Affirmed.

The claimant testified that on Injury 1, she was working as a driver/guard for (employer). She stated that she had returned to a light-duty position on that date after having sustained a compensable left ankle injury on Injury 2. She testified that on October 6th she stayed in the armored vehicle at a bank, while her two coworkers "were making a drop." She stated that she was sitting on the passenger side of the truck, when it was struck from behind by another armored vehicle that was attempting to leave the parking lot.

She explained that a deadbolt lock fell and hit her right shoulder in the impact and that she was "jolted" forward, causing injury to her neck and back and additional injury to her left ankle. On cross-examination, the claimant explained that she braced herself with her feet to keep from falling forward and that, in doing so, she was injured. The claimant testified that she reported her injury when she returned to the station. Thereafter, she attended a meeting where the employees were advised that there was going to be a reduction in force based on seniority.

Ms. R testified at the hearing that at the time of the claimant's alleged injury she was the employer's safety/security supervisor. Ms. R stated that she first learned of the incident on Injury 1, from the dispatcher who advised her that another armored vehicle had "tapped" one of the employer's armored vehicles and that there was no injury or damage to the truck. Ms. R testified that she approached the claimant to ask her what had happened and if she was okay and the claimant said she was. Ms. R also stated that she looked for damage on the vehicle and did not find any. Finally, Ms. R testified that she had been involved in an accident where she was sitting in a stationary armored vehicle that was struck by another vehicle. She stated that although there was damage to her vehicle, she did not feel the impact, she only heard it.

The carrier introduced an accident report written by the driver of the armored vehicle that struck the vehicle in which the claimant was sitting. He explained that he was parked between two armored vehicles, that he backed up as far as he could and cut his wheels as far as he could to the right, that he started to let the truck ease forward, without putting his

foot on the accelerator, and that his vehicle “slightly bumped” the truck in front of it. He stated that he got out of the truck and saw that neither vehicle was damaged and that the person in the vehicle he hit did not appear to be injured, so he continued his route.

On remand, the hearing officer found that “[t]he claimant was involved in an automobile accident on Injury 1, in the course and scope of her employment” and that “[a]ny injury Claimant suffered was not caused by the automobile accident of Injury 1.” The claimant argues in her appeal, that she did sustain an injury to her neck, right shoulder, back, tailbone, and left ankle in the accident, emphasizing the evidence that she believes supports her position. The question of whether the claimant sustained a compensable injury was a question of fact for the hearing officer to resolve. He could have found injury based on the claimant's testimony alone. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, he was not bound to accept her testimony. It only created an issue of fact for him to resolve. In his discussion, the hearing officer stated that “[w]hile it is true that the Claimant alleges to be injured and claims that this accident caused her injury, the account of the accident, by her and by the other witnesses to the accident, does not explain how she could have been injured in this accident.” Thus, it is apparent that although it is undisputed that the accident occurred, the hearing officer was not persuaded that the accident caused damage or harm to the physical structure of the claimant's body. And, as such, she did not sustain her burden of proving that she sustained an injury within the meaning of that term for purposes of the 1989 Act. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence before him. Section 410.165(a). He was acting within his province as the fact finder in finding that the claimant did not sustain a compensable injury, damage or harm to the physical structure of the body, in the motor vehicle accident at work. Our review of the record does not reveal that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, 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 determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that she did not have disability. Disability means the “inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.” Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge