APPEAL NO. 991717

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On July 15, 1999, a hearing was held. He determined that respondent (claimant) sustained a compensable injury on injury 1, and has had disability from September 17, 1998, through the date of the hearing. Appellant (carrier) asserts that the accident "could not have occurred the way the claimant related," adding that it was "physically impossible" to have fallen over a rail that was 42 inches high, and concluding that "[claimant] may possibly have voluntarily fallen off the tank in order to stage an injury"; carrier also pointed out that Dr. B testified that there was no damage to the physical structure of the body. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

There were two issues at this hearing--whether claimant sustained an injury in the course and scope of employment and whether there was disability. There was no issue of whether claimant wilfully attempted to injure himself as listed by Section 406.032. In addition, there was no expert testimony in regard to the possibility or impossibility of falling over a rail said to be 42 inches high, and there was no expert testimony in regard to the possibility or impossibility of falling over a rail said to be 42 inches high while on a catwalk during a misty rain with wind while attempting to quickly pick up a pole with a net on it, which, unknown to claimant, was wired to the catwalk. The lawyer for carrier argued the impossibility of a fall, both at the hearing and on appeal.

Claimant was employed by (employer). He began work for employer in April 1996. At the time of the fall on _____, claimant and another employee were going to replenish chlorine at a sewage facility. They stopped, on the way to do that duty, to retrieve a net and pole, according to claimant, that was laying on a tank. Claimant testified that the net was generally left laying at the tank and in the past had not been tied in any way. He said he ran up the catwalk, "yanked" on the net, and fell backward by his momentum, but does not remember "for sure" whether he went over the rail or between it and a lower rail. He does not remember hitting the ground about 15 feet below but thinks he landed on "an angle," face first. He also said that his heels may have hit first and then his low back struck the ground. He said he could not move his legs. The other employee found him lying by the tank. There was evidence that he was laying on a fire ant bed.

He was taken to a hospital nearby in City 1 and then moved that day to Hospital 1 in City 2. On September 24, 1998, he was moved to Hospital 2 in City 3, where he then stayed until November 4, 1998, when discharged.

The emergency medical services driver, Mr. B, provided a statement that said claimant had a knot on the back of his head and some "abrasions, maybe some small cuts" and a cut on his leg. He said that claimant told him he "backed off of it" (the tank). Mr. B

also said that claimant "was out from it," that he was not at the base of the tank. The emergency medical technician report noted no "motor/sensory below hips bilaterally." Ms. M provided a statement saying that she also worked for employer and earlier that morning claimant had asked her about the type of insurance he had, adding that she did not know what he meant. She said she asked about what was withheld from his pay. She said claimant replied that a copy of his check stub said "AD" which she said was accidental death; she then gave him literature on his coverage. She said he also appeared to be stressed, that "he was a worker that was by himself and didn't have any other employees with him." Finally, there was evidence that claimant had contracted hepatitis from his work with sewage for employer.

While hospitalized, claimant received a myriad of tests, none of which showed a fracture of the spine or any other physical damage to the spinal cord that would explain the paralysis in his legs. Dr. B testified by phone that he was the primary doctor at (Clinic) caring for claimant. He practices physical medicine and rehabilitation. He said, in answer to the hearing officer's question about physical harm, after discussing the absence of positive showings on any tests of the spinal cord, that there was "no identification of physical injury." (In early October, Dr. T a neurologist at Hospital 2, performed a consult and said, "I believe paraplegia and sensory level + hyperreflexia is 'organic' and not a conversion reaction"; he recommended more testing. Two days later, after more tests, Dr. T said, "these tests argue strongly against structural lesion and raise a question of conversion reaction.") In describing the absence of test results showing a basis for paralysis of the lower extremities, Dr. B said that claimant was diagnosed to have a conversion disorder by a psychiatrist. Dr. B emphasized that a conversion disorder is "sub-conscious" and is "reality"; it is not malingering; it is not voluntary; it is not an intentional act; it is "not a faking." He said a conversion disorder does have "functional consequences." Dr. B said that claimant, when discharged, could stand upright between two parallel poles and walk 12 feet. He said that he could not say there was a spinal cord injury, but that the diagnosis of conversion disorder was made by the psychiatrist, not him. He agreed that there could be a spinal cord injury that was resolving when told that claimant had some use of the muscles on the top of his right leg (and some feeling in the left), but he could not say which is more likely, between the conversion disorder and the spinal cord, based on the progress claimant has made.

Claimant testified that he has not worked since the accident and could not work because of the accident. Assertions were made at the hearing that the carrier disputed whether there was a compensable injury on Injury 2.

Carrier, on appeal, did not argue that a conversion disorder could not be compensable, but stressed that Dr. B said there was no injury to the physical structure of the body. Carrier had argued at the hearing that the conversion disorder was "not related to an on the job injury," in stressing that it was "impossible for him to slip over" the 42-inch-high rail. Carrier had also brought out that claimant was raised in a disruptive household and had had several convictions (hot checks, damage to property, theft), about eight or nine years ago (claimant is 29). However, the evidence also indicated that claimant was responsible on the job and had been promoted on the job.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The hearing officer indicates, by his finding of facts, that claimant bruised his head and his back, and was cut and abraded, that he did not infer from Dr. B's statement about no identification of physical injury that Dr. B was speaking other than in regard to the spinal cord. The hearing officer also found that claimant has paraplegia due to a conversion disorder. The finding of a conversion disorder and paralysis is sufficiently supported by the medical records in evidence and by the testimony of Dr. B.

In addition to questioning whether there was any "injury to the physical structure," carrier contended that claimant did not accidentally fall over the rail along the catwalk of the tank. Whether claimant fell or willingly jumped off the tank is a question of fact for the hearing officer as fact finder; it is not a question for the Appeals Panel to answer. The Appeals Panel will only overturn a factual determination when it is against the great weight and preponderance of the evidence. Having determined that the evidence in this case regarding an act other than an accident, apart from the speculation offered, does not reach the level of "the great weight of the evidence," the Appeals Panel will not overturn this decision. In so stating, we note that the fact finder's determination of a compensable death in Gregory v. Tex. Emp. Ins. Ass'n, 530 S.W2.d 105 (Tex. 1975) was reversed as a matter of law by the Court of Appeals, saying that the fall was a willful act; however, the Supreme Court did not agree and remanded. In that case, Mr. G was working on a roof of a building at a Chemical Plant when he fell from the roof, sustaining fatal injuries. An expert witness, (WBN), stated that claimant, found with his feet away from the building but with his head 20 feet from the building, had to have been moving at over nine miles per hour as he left the building to land that far away and that the only way to reach that velocity was to be running. The Supreme Court said that the "opinion of an expert as to deductions from those facts is never binding on the trier of fact" and said that "running" was not the only conclusion warranted by the facts. As stated in the case under review, there was no expert in this case saying that the only way over the rail was through a purposeful act. In addition, although claimant was not 20 feet away from the tank, his testimony about his momentum taking him over the rail could be consistent with a descent carrying him a few feet from the tank.

This case presented factual issues for the hearing officer, as fact finder, to determine. He did that. The great weight of the evidence is not against the determination of injury, paraplegia resulting from a conversion disorder which naturally resulted from the injuries sustained, and disability.

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:

_____
Tommy W. Lueders
Appeals Judge

_____
Judy L. Stephens
Appeals Judge