

APPEAL NO. 992003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 14 and July 26, 1999, a hearing was held. She closed the record on August 9, 1999, and determined that appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. Claimant asserts that the determination that she did not sustain injury from a fall on _____, is against the great weight and preponderance of the evidence, citing Texas Workers' Compensation Commission Appeal No. 951547, decided October 30, 1995, and adding that she had "documented harm"; she also states that disability resulted. Respondent (carrier) replied that the decision should be upheld.

DECISION

We affirm.

Claimant worked for (employer) in the period of time comprising December 1998. She testified that she worked as a banquet server in a hotel. On either the night of (allege injury date 1), or (allege injury date 2), claimant slipped and fell at work. She testified that her fall was caused by a tablecloth (either on the floor, as part of the cleaning operation at the end of the night, or hanging from a table onto the floor). She said she landed on her buttocks and then her head hit the floor.

She also stated that she was unconscious for a short time, and then stood up and laughed about the incident. She said she injured her head, neck, and "back shoulder." Claimant also said that she did not tell anyone about her fall, although several people saw it and laughed. She said that "(co-worker 1 and co-worker 2)" are lying when they say that she told them she fell. When asked about a statement she gave on January 13, 1999, in which she said that she was not laughing, claimant said that she "pretended laughing." Claimant agreed that she had injured her neck and shoulder in October 1996 and that she injured her low back in August 1998.

Claimant also agreed that she was terminated on December 18, 1998, as a result of her refusal on December 15, 1998, to leave the work she was doing and assist in another area of the hotel. In agreeing that she refused, on December 15, 1998, to do what she was asked to do by a supervisor, Mr. C, she did not say that she took that opportunity to then tell Mr. C that she had injured herself. She did testify that at the meeting in which she was terminated on December 18, 1998, she reported the injury, which she said occurred the night of _____, prior to being told she was terminated.

The medical records in evidence indicate that Dr. S on October 23, 1997, stated that claimant continues "suffering with severe symptoms in her right shoulder, as well as with severe symptoms of cervical radiculopathy with pain radiating toward the right upper extremity and toward the chest." Dr. S was concerned enough about the condition to request a cervical discogram. On January 23, 1998, Dr. S wrote that claimant "states that

without any precipitating injury she developed a very significant amount of increased pain in her cervical spine with radiculopathy going toward the right upper extremity and paresthesias, including numbness in the fingers, etc." Then, on September 24, 1998, less than three months before the incident of _____, Dr. S said claimant has "continued suffering with discomfort in her cervical spine that increases with hyperflexion and hyperextension and goes to the interscapular areas infrequently has some pain that causes pain and radiculopathy that goes towards the upper extremities."

On August 19, 1998, Dr. S recorded that claimant fell at work on _____, "contusing her lumbar spine and mid thoracic areas." Dr. B provided an orthopedic consult in February 1999, in which he said an upper extremity EMG showed evidence of "right radiculopathy." His impression was cervical strain and cervical radiculopathy. An MRI of the lumbar spine in January 1999, showed no abnormality in discs, "mild facet arthropathies" at L4-5 and L5-S1, and a meningocele or arachnoid cyst at S2.

Claimant also saw Dr. Y, D.C., on December 22, 1998; he provided two initial medical evaluations dated December 22, 1998, one for a (previous injury), in which he states there was a lumbar sprain and lumbar facet syndrome, and another for an injury of _____, in which he says claimant has "cervicogenic headaches, cervical sprain, thoracic sprain." In a subsequent report in March 1999, Dr. Y said that claimant "sustained a neck injury which occurred on _____."

Other employees of employer, either in statements or testimony or both, said that claimant was laughing after the fall. There is no statement or testimony by anyone present, except claimant's January 13, 1999, statement, that says she was not laughing. (Claimant's statement indicates that she was asked whether she laughed "when you got up . . . did you laugh at all to the other employees?"; claimant answered, "I don't laugh because [inaudible]." She immediately was asked a shorter version of the same question and she again replied, "no." However, later in the statement claimant was asked "did you talk to anybody, did anybody come over to see how you were?," to which she replied, "no"; the next question was, "Nobody asked you?," to which claimant replied, "I just told them [inaudible] laughing you know it was a joke." (In this statement claimant also agreed that she was still being treated for the "first accident" when the incident during the time frame of _____, occurred.)

MLC and DL provided statements. In her statement MLC said that she did not see a fall but, "I heard she was laughing and she was [inaudible]. I said why are you laughing woman because I always call her woman, I said why are you laughing and laughing I say oh I fell, and I fell, I said [inaudible] well I didn't see." She added that claimant did not complain of any injury. In her statement DL said that she was asked if she heard a fall and she said that claimant "called me," adding, "so when after she called me and she laughed cause at the same time she was laughing making really and truly I thought she was playing, she said you're my witness, you're my witness I fell." When asked if claimant complained, DL replied, "No, no, no we were making a [inaudible] we were laughing."

Ms. B testified that she works for employer in personnel. She said that she attended the meeting of December 18, 1998, and that claimant said nothing about an injury until after the termination occurred. Ms. L was also present at the December 18, 1998, meeting. She said she did not know of a claimed injury prior to the meeting. She said that at the meeting claimant was asked to give her version of the event leading to the termination. Ms. L also said claimant did say, at that meeting, that she had fallen at that meeting but did not directly say whether it was before or after the termination order. Mr. T said in his statement, "I was in the process of terminating [claimant] from her employment when she asked that question she said basically that she fell on that Saturday and that she didn't feel anything but like all of a sudden Wednesday night 3-4 days later she started to feel something and ah."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She stated in her Statement of Evidence that "credibility played a pivotal role"; she then added that she considered the evidence to show that claimant laughed after falling; that she made no complaint to anyone for several days; that she reported an injury after she was terminated; and that "the medical evidence is not compelling to show that this incident caused any damage or harm . . ." The hearing officer then found that claimant did not sustain an injury on _____ (the language of the issue), and that she had no disability.

The evidence was certainly conflicting as to whether claimant told MLC and DL that she fell and as to whether, when she reported an injury on December 18, 1998, it was before or after termination. Claimant agreed that she told no one of an injury prior to the December 18, 1998, meeting. The medical evidence provided could support different inferences, but a reasonable conclusion from that medical evidence is that claimant had prior injuries to basically the same areas as attributed to the incident occurring during the _____, tie frame; that she was still being treated for prior injuries, and that no clear change in her condition was described in the medical studies provided after the December 1998 incident. While carrier cites Appeal No. 951547, *supra*, that case was written as involving a fall from a considerable height, also described as a "dramatic . . . accident," in which there was no dispute that the claimant in that case sustained "grave damage to his facial area"; in addition, Appeal No. 951547 also noted, in reversing that hearing officer for not finding injury to the neck, back, shoulder, chest, arm, and "neurological injuries," that she did not indicate that she "disbelieved . . . claimant." That case does not control the outcome of the case under review. The hearing officer herein specifically referred to credibility and found against claimant. She was not presented with any substantial injury, or any injury, which all parties agreed had occurred in the _____ time frame. In addition, she could conclude from the evidence that the fall involved was not "dramatic" since she indicated that claimant laughed.

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

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge