

APPEAL NO. 000458

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 9, 2000, a hearing was held. The hearing officer determined that appellant (claimant) did not sustain a compensable injury on _____, had good cause for the late reporting of an injury, did not have disability, and was not barred from seeking workers' compensation because of an election of remedies. Claimant asserts that the hearing officer did not make a finding of fact concerning a compensable injury and that the "findings are that there was a compensable injury, but that the compensable injury did not cause the bunions or need for surgery." Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant works for (employer). She testified that on _____, she was moving freight with another employee when the other employee lost control of one end of a crate, resulting in the crate falling across claimant's left foot, just back from her toes. Claimant referred to bruising and soreness, but said she kept working. In January 1999, she was on vacation in LV when her foot pain worsened and she noticed a "bone protruding" or a bump on the side of her foot. She said she then sought medical care. She saw Dr. S on January 18, 1999. He referred her to Dr. A. Claimant said that x-rays showed that she had a splintered bone.

She said she reported her injury to her supervisor on January 22, 1999, adding that she had been told she would have surgery later that month. She indicated that before her vacation trip she thought the injury was not significant. She said that she had never hurt her foot before. Claimant indicated that her doctor said that the crate falling on her foot "could" have caused the problem that required surgery. She said that she returned to work on May 7, 1999.

As the hearing officer commented in his Statement of Evidence, Dr. S's initial note of a foot problem in January 1999 says nothing of an injury or an injury at work. Dr. A provided a sequence of comments about causation; on January 25, 1999, he said that claimant's injury "could have resulted from freight" falling on her foot; on February 26, 1999, Dr. A said that claimant had complained of pain in "both feet" and was diagnosed with "hallux valgus (bunions)," adding that claimant said she "always had bunions" but had no problem until a 50-pound box fell on "her feet" at work. Dr. A then said, "Dr. A feels that the freight falling on her feet did not cause her condition but very well could have agitated it." Dr. A then said on March 10, 1999, that surgery on January 26, 1999, involved partial excision of first metatarsal head with osteotomy and excision of proximal phalanx head fifth digit and partial excision of fifth metatarsal head. He added, "I feel these conditions were not caused from the freight falling on her feet but very well could have agitated her condition." In May 1999, Dr. A said that claimant's conditions "in all probability, existed before the injury, but could have been exacerbated by the freight falling on her foot." On August 19, 1999, Dr. A said that based on reasonable medical probability, a "producing

cause" of claimant's need for surgery "performed on January 26, 1999," was her work-related accident of _____; he added that she had not been symptomatic before that time but was symptomatic after _____. Dr. A also referred to "swelling" that "led to . . . surgery," but neither his prior comments nor any notes before surgery refer to swelling. These comments of Dr. A indicate some variances which the hearing officer could consider to be conflicts and could then reconcile.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While claimant states that no finding of fact was made concerning a compensable injury and that the hearing officer found a compensable injury but that it was not the basis for surgery, the findings of fact do not have to be interpreted in that way. On the contrary, the hearing officer found, "claimant was not injured at work on _____," which this review considers to have met the issue directly. The hearing officer did not find that a compensable injury occurred but merely that it did not cause bunions and the need for surgery.

With no prompt medical care and with the first medical care (over two months after the incident) showing no history of a work-related injury, the hearing officer could find that claimant was not injured at work even if an incident of a falling crate took place. No medical record, other than Dr. A's August 1999 letter, noted any bruising, swelling, or other evidence of recent injury.

The evidence sufficiently supports the determination that claimant was not injured in the course and scope of employment. Without a 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:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge