

APPEAL NO. 001323

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 18, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that she did not timely report her alleged injury to her employer; and that she did not have disability. In her appeal, the claimant essentially argues that each of those determinations is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, she was working for (employer) installing mini blinds and drapes in mobile homes. She stated that she was standing on a ladder pulling boxes of blinds off of a shelf and several boxes fell, hitting her on her shoulder. The claimant testified that she injured her right shoulder and right forearm in that incident; that she immediately reported her injury to Mr. SV, the lead person, who took her to the supervisor, Mr. TV, so she could report it to Mr. TV; and that she continued to work with pain in her shoulder until she was terminated on November 19, 1998.

The claimant testified that she first sought medical treatment for her shoulder injury on _____, at the emergency room. The notes from the emergency room reflect complaints of right shoulder pain "onset 1mo/ago." In addition, those records state that there was "no spec. injury-states she hangs drapes & pain has been getting worse on the job x 2 mos" and that the claimant's job requires use of a drill all day. On December 15, 1998, the claimant had an appointment with Dr. D, who diagnosed a right shoulder separation and possible cervical strain and possible right carpal tunnel syndrome. Dr. D records the claimant's history of injury as follows:

She said she's done heavy weight lifting for a long period of time and in September the shoulder started hurting her some, but recently she had fallen a couple of times at work and hurt the shoulder, this happened about 3 weeks ago.

The claimant completed her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) on January 27, 1999. In the box asking for an explanation of how her injury occurred, the claimant wrote that she was injured using a hand drill and carrying heavy weight at work. The history of the boxes of mini blinds falling on her shoulder first appears in a March 14, 1999, emergency room report.

In his recorded statement of March 6, 2000, Mr. SV stated that the claimant never reported a workers' compensation injury to him and that he was not aware of her having reported it to Mr. TV either. In addition, he stated that she never told him that she had fallen off of a ladder at work or complained to him about hand or arm pain. Finally, Mr. SV stated that the claimant was terminated in November 1998 for absenteeism.

The claimant has the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proof. In his discussion, the hearing officer emphasized the differences in the histories of the claimant's injury reflected in the emergency room records, Dr. D's records, and in the claimant's TWCC-41. The hearing officer properly considered those factors in making his credibility determination. The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant by determining that she did not sustain a compensable injury. 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. Accordingly, 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).

The question of whether the claimant timely reported her injury to her employer was also a question of fact for the hearing officer. The claimant testified that she reported her injury to Mr. SV and Mr. TV on _____. However, Mr. SV stated that the claimant did not report a work-related injury to him. The hearing officer noted that the claimant's testimony was not credible. As the fact finder, he was free to discount the claimant's testimony and to give more weight to the evidence from Mr. SV. The hearing officer's determination that the claimant did not timely report her alleged injury to her employer is not so against the great weight of the evidence as to compel its reversal. Pool; Cain.

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant 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, by definition, the existence of disability depends upon there being a compensable injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge