

APPEAL NO. 002650

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 October 11, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. In his appeal, the claimant essentially argues that those determinations are 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 _____, he was working as a checker for the employer helping to load freight onto a trailer. He stated that the forklift operator had taken three crates into the trailer and was having difficulty getting the blades out from under the freight; thus, the claimant put his foot on a crate to create a counterweight so the blades could be removed. The claimant testified that as the operator put the forklift in reverse, the freight flew up, throwing him backwards and "slamming" him into the side of the trailer. The claimant stated that he came down head first inside the trailer and that he landed about six to ten feet away from the freight.

Mr. C, an assistant general manager with the employer, stated that he received notice that the claimant was alleging an injury on _____, and he went to the scene and spoke to the claimant. Mr. C stated that he asked the claimant to identify the forklift and the forklift driver who had been involved in the accident and the claimant stated that he did know which forklift hit him or who the driver was. Mr. C stated that he and the union steward spoke to each of the forklift drivers that remained on the premises shortly after the incident occurred and that none had any knowledge of the incident. Mr. C also stated that on the day following the accident he spoke to those employees who had already left for the day when he and the union steward went around to question potential witnesses and they too did not have any knowledge of the alleged incident. Mr. C further stated that the driver of the truck that the claimant was loading at the time of the alleged incident said that she was in the trailer at the time but that her back was turned so she did not see what happened. Mr. C also testified that when the claimant recalled the name of the forklift driver at the benefit review conference he contacted that employee who provided a statement that he had no knowledge of the incident.

The evidence was sufficient to support the determinations that the claimant did not sustain a compensable injury on _____. As noted above there were numerous conflicts and inconsistencies in the evidence. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts and to determine what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determinations

are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Reviewing the hearing officer's injury determination under that standard, we find no sound basis to disturb it on appeal.

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability within the meaning of the 1989 Act. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge