APPEAL NO. 010690

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 February 27, 2001. The hearing officer held that the appellant (claimant) was injured while involved in a willful intention to injure another, and that the respondent (carrier) was thereby relieved of liability for the injury. As the injury was not compensable, the claimant was found not to have disability as defined by the 1989 Act.

The claimant has appealed and argues that he was hurt before the altercation and therefore has a compensable injury and disability. He further argues his version of the correct interpretation of the facts presented. The carrier responds that the facts support the hearing officer's decision. The carrier points out that even without a finding in its favor on the cause of the injury, there was essentially no evidence presented to support a disability finding.

DECISION

We affirm the hearing officer's decision.

The carrier is discharged from liability (and bears the burden of proof of showing) if the claimant is injured as the result of his willful intent to unlawfully injure another. Section 406.032(B). The hearing officer in this case did not err in determining from the conflicting evidence that such was the cause of the claimant's claimed injury here. Although no findings were made about whether the intent was to "unlawfully" injure another, the police in this case had been called and took a report and this finding can be implied. There is sufficient evidence from which the hearing officer could conclude that an unbroken chain of events was put into place when the claimant jumped up on the forklift driven by another employee and engaged in a confrontation with that employee that led to the injury here. When a compensable injury is not found, a threshold requirement for finding "disability" has not been met. We observe that the record contains a series of "off work" slips from the claimant's doctor on the required Texas Workers' Compensation Commission form but need not address the technical arguments that the carrier has made about these forms because the hearing officer also held that the evidence was insufficient to show that the claimant's back injury caused him to be unable to earn his preinjury average weekly wage.

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the

overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge