

APPEAL NO. 010727

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 March 20, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and thus suffered no resulting disability. The claimant appeals and seeks reversal based on sufficiency grounds. The respondent (carrier) responds and urges that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in concluding that the claimant did not sustain a compensable injury on _____. The claimant testified that on that date, while working as a packer of stereo and digital components, she injured her low back when she reached into a box for some bubble wrap. The claimant testified that this incident occurred around 10:45 a.m. on _____; she also testified that she further injured her back, in the middle and upper regions, in a motor vehicle accident (MVA) that occurred on February 15, 2001.

The carrier introduced documentary and testimonial evidence which contradicted some of the claimant's allegations. The evidence supporting the carrier, and the hearing officer's decision, includes the claimant's treating doctor's, Dr. G, first report after the claimant's alleged incident of _____. In that report, made January 15, 2001, Dr. G wrote that the claimant complained of pain in her mid-back and neck as a result of her accident at work, directly contradicting the claimant's testimony that she injured those parts of her back a month later in an MVA. Further, the carrier called some of the claimant's coworkers to testify and they said that the claimant told them different mechanisms of injury than that to which she testified. The coworkers said that the claimant told them she had hurt her back either lifting a board or lifting a "white box." In addition, the claimant's supervisor testified that the claimant told him she was injured at around 9 a.m. and continued to work, in completion of her shift, until noon.

The hearing officer did not err in determining that the claimant did not have disability. The claimant testified and the carrier introduced documentary evidence regarding the fact that on January 9, 2001, she was "suspended" for one day for getting into an argument with her supervisor; the carrier argued that the suspension was the reason for the beginning of the claimant's "inability" to work. In addition, with no compensable injury found, there is no basis upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence

and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge