

APPEAL NO. 012342
FILED NOVEMBER 6, 2001

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 September 14, 2001. With respect to the issues before him, the hearing officer determined that the claimant did not sustain a compensable injury on _____, and that she did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In addition, the claimant contends that the hearing office erred "by using a poorly written BRO [benefit review officer] report against the Claimant." In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the injury issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was not persuaded that the claimant sustained her burden of proving that she sustained an injury when she hit her head in an elevator at work on _____. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the disability determination. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

Finally, we briefly address the claimant's assertion that the hearing officer erred in using inconsistencies in the claimant's positions at the benefit review conference (BRC), as stated in the BRO report, and her testimony at the hearing as a basis for determining that the claimant's testimony was not credible. The claimant's attorney, who began representing the claimant after the BRC, did not file a response to the BRO report indicating that the report did not accurately state the claimant's positions on the disputed issues in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(c) (Rule

142.7(c)). In addition, she did not object at the hearing that the report did not accurately reflect the positions the claimant had taken at the BRC. Accordingly, the claimant did not preserve any error for appeal. Nevertheless, we find no merit in the assertion that the hearing officer erred in considering inconsistencies in the claimant's positions at various points in the pursuit of her claim in making his credibility determinations. This is particularly so in light of the fact that there is no evidence in the record to support the claimant's attorney's bold assertion that either the BRO or the ombudsman assisting the claimant at the BRC misrepresented the claimant's positions on the disputed issues.

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CLAUDINE JACKSON
600 E. HURST BOULEVARD
HURST, TEXAS 76053.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge