

APPEAL NO. 92306

A contested case hearing was held on May 27, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. He determined the appellant had not sustained a compensable injury and denied him benefits under the Texas Workers Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant disagrees with the decision of the hearing officer, asserting that he did sustain an injury to his right foot and back and is entitled to benefits. Respondent argues that the appeal is not timely filed and that the decision is not against the great weight and preponderance of the evidence.

DECISION

Agreeing that the findings, conclusions and decision of the hearing officer are not so against the great weight and preponderance of the evidence as to clearly wrong or manifestly unjust, we affirm.

We have determined the appeal is timely filed since the envelope it was sent in is post-marked July 2, 1991. Applying the rules allowing for mail time (Tex. W. C. Comm'n TEX. ADMIN. CODE §102.5) the appeal was received on the 15th day and thus was timely. Article 8308-6.41(a).

We have carefully reviewed the somewhat limited evidence of record and agree that the decision of the hearing officer is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). The evidence is sufficient to support the decision. Texas Workers' Compensation Commission Appeal No. 92228 (Docket No. redacted) decided July 17, 1992.

The appellant states he injured his right foot when he stepped in a small hole in the ground at his place of employment. He acknowledged he had had polio as a child and that his right leg was shorter than his left leg, but that this was not related to his injury. He also claims he missed two weeks of work in November 1991 as a result of the injury. Medical reports in evidence do not tend to support an injury to the right foot on (date of injury) as claimed by the appellant. One medical report by the physician who saw the respondent on (date), mentions that the respondent had been walking more in his job and indicated he developed pain in the right foot. The report also states: "[t]here is no definite injury. No tenderness or inflammation. No edema is noted. X-ray shows a few spurs but no other abnormality." There is also a medical statement dated November 18, 1991, concerning the respondent's back which indicates that all tests are within normal limits, including an MRI, but states the respondent should be considered "totally disabled."

The hearing officer, as the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence (Article 8308-6.34(e)), has the responsibility to resolve inconsistencies and conflicts in the evidence and arrive at findings

of fact. Texas Workers' Compensation Commission Appeal No. 92161 (Docket No. redacted) decided June 22, 1992. We find no basis to disturb his determination that a compensable injury has not been established in this case.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge