

APPEAL NO. 92422

A contested case hearing was held on July 10, 1992, in (city), Texas, (hearing officer) presiding as hearing officer. He determined that the appellant had not shown by a preponderance of the evidence that he suffered an injury to his back and shoulder during the course and scope of his employment and denied benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). The appellant urges, in essence, that the preponderance of the evidence establishes that he was injured in the course and scope of his employment and asks for a review of the hearing officer's decision. Respondent urges that there is sufficient evidence to uphold the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Determining that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm.

This case hinged upon the credibility of the claimant and the resolution of conflicting evidence surrounding the claimed injury. Briefly, the appellant, who was on his first day back on the job after having been previously fired by the employer, claimed he was injured when he was helping to unload a heavy roll of carpeting at the direction of his supervisor. He testified that the carpeting shifted and fell toward him causing him to fall to his knees and injuring his back and shoulders. A recorded statement from the supervisor and a coworker, who the appellant stated was a witness to the incident, denied that the appellant had anything to do with the unloading of the carpet. The supervisor stated that the appellant asked her if he could look at the carpet and later told her he hurt his back when he lifted up a corner of the carpet to look at the color. The appellant testified that later that day he went to a local clinic. There are no medical records in evidence concerning this visit or any subsequent referrals although they are referenced in a narrative report by a (Dr. H). The appellant saw Dr. H, a chiropractor, on (date). His narrative report refers to the appellant's earlier treatment and he opines, from the history provided by the appellant, that he was injured on the job. Dr. H states the appellant had a broken left clavicle and a herniation of the L5-S1 disc, although this had not been diagnosed in earlier medical examinations or treatment. Dr. H opines that the appellant will have a 40 to 70 percent disability rating after he heals. This contrasts to a medical report of one of the referral doctors which stated:

The patient had a MRI of the lumbar region dated December 21, 1991, which showed degenerative changes at L5-S1 intervertebral disc with a dorsolateral protrusion and narrowing of the L5-S1 neuroforamina on the left. I also reviewed the x-rays of the shoulder and the clavicular region which did not show any significant abnormalities of the cervical curvature.

In summary, I do not find significant abnormalities in the lumbar region. The presence of L5-S1 disc protrusion and the narrowing of the L5-S1 neuroforamina on the left side is noticed. However, the patient does not have major clinical correlations such as a

loss of reflex or muscle atrophy or weakness from the L5-S1 root distribution.

Of course, the above findings have caused impairment in this gentleman although there is minimal clinical correlation.

I believe the patient will recover from his pain and impairment from the lower back trauma in a short period of time. Physical therapy, exercises, and supportive treatment will be very effective. As far as his left shoulder is concerned, I do not find any significant neurological abnormalities. The bony prominence of minimal degree in the left clavicle presently has no clinical significance. It is probably due to muscle imbalance in the shoulders and the patient's awareness of the protuberance.

In the Employee's Notice of Injury or Occupational Disease and Claim for Compensation form filed on (date of injury), the appellant lists his "lower back" as the part of his body effected and "strained back" as the nature of the injury.

As indicated, this case hinged on credibility and the resolution of conflicts and inconsistencies in the evidence. Article 8308-6.34(e), 1989 Act, provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. The hearing officer, as the fact finder, may believe all, part or none of the testimony of a witness, judge credibility, assign weight and resolve conflict and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No.92232 (Docket No. redacted) decided July 20, 1992, and cases cited therein. Where, as here, the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, affirmance is appropriate. In re Kings Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers Compensation Commission Appeal No 92252 (Docket No. redacted) decided July 27, 1992.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge