

APPEAL NO. 92685

A contested case hearing was held in (city), Texas, on November 20, 1992, (hearing officer) presiding as hearing officer. He determined that the appellant's (claimant) alleged neck and shoulder injury of (date of injury), did not result in disability. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Claimant appeals asking for temporary income benefits (TIBS) "from 2/11/92 until considered necessary," and payment for medical treatment previously received and in the future. Respondent (carrier) asks that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the determinations of the hearing officer, the decision is affirmed.

The facts of this case are not complicated and the case hinged on the assessment of weight and credibility by the fact finding hearing officer. Briefly, the claimant asserts that he injured his neck and shoulder on the job on (date of injury), that he was terminated (for insubordination) on February 10, 1992 and that he first sought medical treatment the day after his termination but had a difference of opinion with that doctor and sought other medical treatment on or about February 15, 1992. The record indicates that he reported a slip and fall accident on (date of injury), and stated he did not want to go to a doctor. Several days later he amended his report to reflect he injured his neck and shoulder. He continued working his regular duties until February 10 1992. He was treated at the (H C Clinic) from February 15 through 22, 1992. Carrier called three witnesses who testified in essence that they worked with the claimant on an almost daily basis, that the claimant performed his usual duties between (date of injury) and February 12th without acting like he was injured or any indication of any physical impairment, that he never complained of any pain or any injury, and that the first any of them (except the supervisor to whom claimant initially report the accident) had heard about any injury or physical problem involving the claimant was after he was terminated. Carrier also introduced two affidavits from coworkers, which essentially indicated the same thing as the witnesses called at the hearing, and forms indicating the claimant was approved for unemployment benefits. In this regard, claimant indicated that his neck and shoulder bothered him between (date of injury) and February 10th, that he worked as long as he could without seeing a doctor, that his condition has become worse since February 10th, that he can not now do the type of work he was doing when he was injured, and that he has attempted to get "totally different" employment but has not been successful.

As indicated, the factual determinations in this case depended largely on credibility. The hearing officer saw and heard the testimony and observed the demeanor of the witnesses, including that of the claimant. He had documentary evidence before him to weigh and assess. From our review of the record, we do not find any basis, with one minor exception on a finding of fact, to disturb the assessment of the hearing officer. The minor

exception concerns the hearing officer's finding that the claimant first sought medical treatment on February 15, 1992. The claimant testified that he went to a doctor the day after he was terminated (apparently February 11th) but that he found that doctor to be unacceptable and sought other treatment, apparently that reflected in the record from H C Clinic. The finding of fact in question is modified to reflect this uncontroverted testimony and is approved insofar as it states that the claimant did not seek treatment until after February 10, 1992. The remaining findings are affirmed.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Where, as here, there is sufficient evidence to support his determinations, there is no sound basis to disturb his decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we be warranted in setting aside his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge