

APPEAL NO. 931007

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*). On August 26, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not injure his back during an altercation on (date of injury). Claimant asserts his disagreement with the decision and indicates that he told the truth about the incident; he points out that hearing officer found some contradictions in the evidence of the school and takes issue with the decision not to admit some of his evidence. He asks that all three appeals judges sign the opinion that is issued.

DECISION

We affirm.

Claimant worked as a counselor for the school. Prior to (date of injury), a question had arisen about whether a special education student should receive credit for a particular course. Claimant and (Mr. P), an assistant principal, had discussed the matter without reaching agreement. On (date of injury), the special education supervisor from the central office of the school district, (VH) was present, and Mr. P wanted her opinion concerning whether credit should be given for the course.

Claimant, Mr. P and VH all agreed that claimant and Mr. P entered a small room and talked with VH. Claimant indicated that at the end of the conversation, Mr. P in trying to exit, struck claimant in the back with the doorknob. Mr P and VH disagreed. VH stated she could see the door and that claimant was never hit by the doorknob. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could believe VH and Mr. P even though she found some contradictions in the evidence. She also commented that claimant was not credible. The hearing officer, as trier of fact, could choose to believe some but not all of what Mr. P and VH stated; she also is to resolve conflicts in the evidence. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). She was not required to accept the testimony of claimant in regard to the incident. See Presley v. Royal Indem. Ins. Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ).

The photographs, letter, and diagram offered by claimant were not admitted because they had not been exchanged in accordance with Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13)). The hearing officer did not err in refusing to admit documentary evidence not meeting the exchange requirements.

Material attached to claimant's appeal that was not admitted at the hearing cannot be considered for the first time on appeal. The matter submitted is not material enough to the issue in this case to probably change the decision if considered, nor has it been shown to meet the other requirements for remand, so the case will not be remanded. See Texas

Workers' Compensation Commission Appeal No. 93943, decided December 2, 1993.

The Appeals Panel will not overturn a decision based on factual determinations unless the decision is against the great weight and preponderance of the evidence. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). In this case there was sufficient evidence to support the hearing officer's findings of fact and the decision.

The decision and order that claimant was not injured in the course and scope of employment are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge