

## APPEAL NO. 93718

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On July 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) was injured (assaulted) in the course and scope of employment as a bus driver and has disability. Appellant (authority) asserts on appeal that findings of fact in support of the decision were not sufficiently supported by the evidence, referring specifically to inconsistencies in the claimant's statements. Claimant replied that the evidence was sufficient, pointing out that the claimant was very consistent in describing the assault.

### DECISION

We affirm.

At the hearing the parties agreed that the issues were whether claimant was injured in the course and scope of employment and whether he has disability as a result thereof.

Section 410.204(a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

Authority asserts on appeal that findings of fact indicating that claimant was assaulted, while returning the bus to its garage, which was in furtherance of the business of Authority, thereby suffering injury in the course and scope of employment, received medical treatment, which prevented his driving, and was unable to obtain and retain employment from March 15, 1993, until the present (date of the hearing), were insufficiently supported by the evidence.

The Appeals Panel determines:

The contested findings of fact were sufficiently supported by the evidence and the evidence and findings of fact sufficiently support the two conclusions of law that address injury in the course and scope of employment and disability.

Claimant drives a bus for the Authority. He had been exposed, as a driver, to miscreants prior to this incident. On (date) two men sought information about another bus; in response to which claimant slowed and opened the door of his bus. They entered the bus with the smaller one brandishing a handgun. Saying nothing, the larger one began striking claimant about the head, possibly with a piece of metal in his hand. Claimant varied the speed and/or direction of the bus causing some inability by the intruders to maintain purchase. Claimant pushed one into the other causing them to exit the bus through the open door; claimant is described as weighing 250 pounds, muscular, with a recent history of having played professional football.

Claimant reported the incident and went to the emergency room of (hospital). The hospital record shows contusions of the head, neck, and right knee; it also states that

claimant hurt the knee when he slipped and fell while encountering the two incompetent assailants. The hospital gave claimant medication. Claimant was told to see a (Dr. L), but claimant did not do that. A statement by (Dr. J) dated April 8, 1993, indicates that claimant saw him; Dr. J called for certain testing of the knee and brain and advised that claimant not work. Dr. J gave claimant medication and prescribed therapy.

Claimant testified consistently that he did not slip and fall when molested. He rose out of his seat when he shoved the man hitting him into the little man with the gun. Claimant does not know exactly what his knee struck to cause the injury, but while he acknowledged a past shoulder injury, he stated that he had not injured his right knee before. Claimant gave four statements to various investigators. One reported the location of the ineffectual attack erroneously in part. The other statements all reported the location correctly. Claimant indicated that he told the interviewer in question the correct streets involved and repeated the location, but the interviewer still used one incorrect street name. The statement of claimant's supervisor verified claimant's prompt report of the incident and described the knot he saw on claimant's head.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165 of the 1989 Act. He could believe the testimony of claimant, the prompt report claimant made of the assault, the report of contusions made at the time by the hospital, and the observation of claimant's supervisor to determine that claimant was injured in the course and scope of employment. While the evidence of the effect of medication is not overwhelming, claimant testified that it interfered with his driving, and Dr. J stated in his report that claimant should not work. The evidence also sufficiently supported the determination that claimant has disability.

The decision and order of the hearing officer are sufficiently supported by the evidence and are affirmed.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge