

APPEAL NO. 93960

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 September 22, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine certain issues on remand from Texas Workers' Compensation Commission Appeal No. 93547, decided August 2, 1993. She determined that respondent/cross-appellant (carrier) had actual knowledge of appellant's (claimant) (date of injury), work-related injury, but such injury did not cause claimant to be unable to obtain and retain work equivalent to his preinjury wage. Claimant appeals stating that he does have disability and adds that he attached "other medical" (no attachment was received with his appeal). Carrier appeals findings of fact that indicate its representative obtained actual notice of the (date of injury), injury on November 11, 1992; it replies to claimant's appeal that sufficient evidence supports the hearing officer's decision as to disability.

DECISION

We affirm.

On May 18, 1993, a contested case hearing considered three claims filed by the claimant. One claim was remanded for consideration of whether the carrier had actual knowledge of the injury ((date of injury)) through an interview conducted with claimant on November 11, 1992; if there was actual knowledge at that time, then the question of disability from that injury also needed to be addressed. The facts are set forth in Appeal No. 93547 and will not be repeated.

In this claim, claimant alleged that he tripped while at work and either started to fall or fell. In the hearing on remand, claimant described the (date of injury) incident as "my leg gave way." Claimant relied on the evidence that had been introduced at the May 18, 1993, hearing, which the hearing officer took notice of for the hearing on remand. Carrier also relied on the document it introduced previously, plus it called (DB) and (GT) (employer's office manager) to testify; on November 11, 1992, DB, for carrier, conducted the interview of claimant in which he appeared to refer to an injury other than the one of (date), being investigated. She testified as to the confusion created by claimant's answers. She did testify, however, that claimant told her of a separate "stumbling" incident, not related to the (date) injury, related to working with tickets while on light duty. She added that claimant also said he was not on light duty and had not gone back to work.

The testimony of DB, together with that of claimant, claimant's exhibit 6 (statement of claimant to DB), and the transcript of GT's testimony at the May 18th hearing provided sufficient evidence to support the determination of the hearing officer that the carrier had actual knowledge of the (date of injury), injury within 30 days. While carrier, on appeal, states that claimant's statement was confusing and it did not have notice of an injury of (date of injury), claimant's testimony indicated that this injury occurred while on light duty and the transcript of GT's testimony showed that after the alleged injury of (date), claimant was placed on light duty (month date and date of injury); thereafter claimant has not returned to

work.

The hearing officer also found that the injury of (date of injury), did not cause disability. The claimant appeals this facet of the decision. Claimant's appeal refers to additional medical evidence, apparently meant to accompany the appeal, but no documents accompanied the appeal. The Appeals Panel only considers the record, the appeal, and the response; if documents had been attached, the Appeals Panel could not have rendered a final decision based on them unless they had been considered by the hearing officer. See Section 410.203.

The hearing officer points out in the Statement of Evidence that (Dr. K) in claimant's exhibit 5, listed claimant's chief complaint as pain in the lower back and left leg from a rock hitting him on the leg. The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She could choose to give more weight to the report of Dr. K, dictated October 27th and typed October 29th, which contained the above information, than she did to (Dr. W) report of his examination of claimant occurring on November 17, 1992. In the subsequent exam, Dr. W also refers to the incident of (date), but adds, "[a] few days later, again at work, the patient was on the stairs, when he lost his balance and almost fell. In the process again, he twisted his neck and back. He now complains of low back pain which radiates to the left side of the leg, back of the left knee, left hip and left thigh, and numbness in the front of the left thigh and back of the left knee." Dr. W performed more tests on claimant which he found to be normal.

Claimant testified that he has not gone back to work except for "two periods" in August or September 1993 when he tried to work but could not. He indicated his problem is with his left leg; the evidence at the hearing on remand explored the circumstances of the actual knowledge of the carrier more than it did which incident, if any, caused disability. The evidence, including the medical record of Dr. K dated October 29, 1992, is sufficient to support the determination that claimant does not have disability as a result of the (date of injury), incident when claimant's "leg gave way."

The decision and order of the hearing officer are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore

Appeals Judge