APPEALS PANEL NO. 94006

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On November 19, 1993, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. She determined that appellant (Claimant) fell at work on (Date of Injury), but did not show that he was injured from the fall; there was no disability as a result of a compensable injury. Claimant asserts that certain of his documents were erroneously not admitted, states that lies appear in the record, attacks the basis given for his firing, calls for reversal of the hearing officer's decision, and asks that fines of $5,000 and $1,000 be imposed. Carrier replies that claimant's appeal is not timely, and that if the appeal is reviewed, the hearing officer's decision should be upheld.

DECISION

The decision is affirmed.

The decision of the hearing officer was provided to the parties by cover letter dated December 9, 1993; it was distributed on December 10, 1993. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides:

> For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

With a distribution date of December 10th, the deemed date of receipt was five days later on December 15, 1993. While Texas Workers' Compensation Commission Appeal No. 92090, decided April 24, 1992, indicates that "deem" means "hold," Texas Workers' Compensation Commission Appeal No. 92099, decided May 21, 1992, indicates that the date appellant states the decision was received is the date from which the 15 days will be counted. Since Section 410.202 requires a party to file a written request for review "not later than the 15th day after the date on which the decision of the hearing officer is received . . .," the last day on which an appeal could be filed was December 31, 1993, 15 days from December 16th when claimant states he received the decision. The appeal was not received by the Texas Workers' Compensation Commission (Commission) until January 3, 1994. The provisions of Rule 143.3(c), which allow the Commission to receive an appeal not later than 20 days after the appellant received the hearing officer's decision, are conditioned on a mailing of the appeal no later than the 15th day after receiving the decision. In this case, the postmark on the envelope contains the date December 31, 1993. Since the appeal was mailed no later than 15 days after receipt, the 20 day provision does apply. The appeal was timely.

Claimant had worked less than a year as a security guard for (employer). He testified that he slipped and fell in an area of a mall that had been mopped. No statement or testimony indicated that the incident was witnessed, but statements did indicate that

claimant was seen on the floor and that he told coworkers he had slipped. The statements also indicated that a supervisor offered to call an ambulance and asked if claimant needed to see a doctor. Claimant testified that the offer of an ambulance was made (which he declined, not considering the incident an emergency) but disputed that the offer to see a doctor was made. The accident occurred on (Date of Injury).

Claimant first saw a doctor for this incident on September 18, 1992. He testified that his employer did not provide a contact point with the carrier in regard to a doctor and that when he tried to see a doctor, no one would see him. He acknowledged that he could have seen a doctor in a county hospital (BT was specifically mentioned) but claimant indicated that he had experience with that hospital and found it was "a bureaucracy." He added that he did not want to "spend days and days in the bureaucracy of the system." When he saw the doctor in September, claimant states he reported "occasional pain and numbness in my arms, leg pain, pain in my back, pain in my head, headache, sometimes shooting pains in my legs and in my arms." Claimant provided no medical records.

The carrier did provide in evidence the medical report of (Dr. K) showing that claimant was seen on September 18, 1992. Dr. K recited the history given him by claimant as to a fall in (Month,Year) and car accidents in (year) and (year). Dr. K states that the (year) car accident "resulted in a strain of his back" for which claimant received conservative treatment. Dr. K then stated, "[i]t is my impression that the patient has recurrent cervical and dorsolumbar strain along with post traumatic headache syndrome. The patient was reassured there is no acute medical emergency was identified and advised to seek further conservative treatment . . ."

The greater part of the record was devoted to the basis for firing claimant on the date of the fall, claimant's work performance, and claimant's pending lawsuits against the employer and Texas Employment Commission.

Claimant objects to documents of his that were not admitted. The record indicates that certain documents of claimant's were not admitted because they had not been exchanged. While claimant asserted that the lawyer who at one time represented him was supposed to do that, the record shows that continuances were granted, and claimant was given an appointment with an ombudsman to take care of such responsibilities--claimant did not meet with the ombudsman prior to hearing. The decision of the hearing officer not to admit certain documents because of failure to meet exchange requirements was not an abuse of discretion. *See* Texas Workers' Compensation Commission Appeal No. 92108, decided May 8, 1992. (We note that no document that was not admitted contains information relative to the fall in question.)

Claimant states that certain testimony offered by the carrier was not the truth. The only area of disagreement relative to the fall involved whether claimant was asked if he wanted to see a doctor. Any question of credibility was for the hearing officer as sole judge of the weight and credibility of the evidence to determine. *See* Section 410.165. As stated, much of the record pertains to evidence by both parties as to claimant's firing and

his subsequent actions in regard thereto. We will not substitute our judgment for that of the hearing officer unless her determination is against the great weight and preponderance of the evidence.

Claimant's attack on the basis for his firing is not a question for this Commission. It could be relevant in regard to a question of disability, but in this case since the determination of no compensable injury is upheld, no disability can follow.

Claimant's request for reversal is considered to be an attack on the sufficiency of the evidence. The hearing officer could consider that the 1989 Act makes the insurance carrier liable for injury, not an accident. *See* Section 406.031(a). An injury is "damage or harm to the physical structure of the body." *See* Section 401.011(26). The hearing officer could question why the claimant waited eight months to seek medical attention if he suffered harm to his arms, legs, back, and head. *See* Texas Workers' Compensation Commission Appeal No. 92543, decided November 23, 1992. The hearing officer could determine that claimant in not reporting an injury to a doctor for eight months, in these circumstances, failed to prove that the incident of (date of injury), caused the injuries of which he complained. *See* Texas Workers' Compensation Commission Appeal No. 93086, decided March 17, 1993.

Claimant's request for fines to be assessed was not raised at the hearing. The Appeals Panel has stated that it will not consider an issue that is raised for the first time on appeal when it could have been raised at the contested case hearing. *See* Texas Workers' Compensation Commission Appeal No. 91100, decided January 22, 1992. (The reasons stated for the fines requested were known at the hearing--they involved a question of whether the employer promptly notified the Commission of an injury and whether a representative of employer should be fined for not attending an earlier scheduled hearing.) Claimant may inquire whether an action involving an administrative fine can be brought through the Compliance and Practices Division of the Commission.

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge