APPEAL NO. 94048

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), a contested case hearing was held in (city), Texas, on October 27, 1993, (hearing officer) presiding as hearing officer. He determined that the claimant sustained a compensable injury on (date of injury), and that he had disability from (date of injury), until July 16, 1993, and from July 24, 1993, until September 16, 1993. The self-insured governmental subdivision (carrier) appeals urging that the evidence submitted conclusively establishes that the claimant was not injured in the course and scope of his employment and, alternatively, that the Decision and Order of the hearing officer is void and of no force since it was not timely rendered and timely distributed to the parties as required by Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(c) and (d). (Rules 142.16(c) and (d)). No response to the request for review had been filed.

DECISION

Determining that the hearing officer's findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and determining there is no reversible error in the untimely rendering of the decision and distribution thereof, we affirm the decision.

This claim involves an unwitnessed incident on the job wherein the claimant testified that he slipped getting off the back of his truck, grabbed a handle and jerked his shoulder. He states he felt pain thereafter, went to a supervisor to inform him that he was experiencing pain in his right arm, shoulder and chest and needed to go to the hospital. He did not mention anything about the slipping incident at the time. He admits that he thought he was having a heart attack. He also acknowledged that he had had an on-the-job injury when he fell a year earlier injuring his right side but mainly his knee which ultimately required two surgeries. He also indicated he told his supervisor later at the hospital that he did not think his condition was job related and that he had experienced similar sensations on several other occasions. According to the claimant, he did not think the injury was job related until a doctor he went to on July 16th stated that he possibly had a tear in his shoulder and that it was probably related to his work and that was when he first realized it was a workers' compensation matter. An Initial Medical Report from this doctor indicated "possible rotator cuff right shoulder tear vs. entrapment syndrome-cervical spine disc" and noted a history of "in truck approx. 4 feet off ground, grabbed ahold of a side bar to proceed to get down and felt a pulling to his right arm/shoulder." Although an MRI was recommended, none was performed as the claimed injury was disputed.

The (date of injury) records from the emergency room indicate that he was diagnosed with "acute pain/paresthesia of right arm, R/O cervical spine and acute muscular spasm of right trapezius." The history portion or the report notes the claimant's asthma and prior fall and injury and "R arm tingling and numbness, L arm sharp pain, comes and goes 20 second intervals, started yesterday at 2 p.m. when patient fell landed on R shoulder." An entry questionnaire at the hospital indicated that the claimant was filing under his health care coverage.

We observe initially that the evidence in this case could reasonably give rise to inferences different from those determined most reasonable by the hearing officer. That, however, is not a sound basis to reverse or set aside the decision of the hearing officer if there is sufficient evidence to sustain his findings and conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). And, it is the function of the fact finder to resolve conflicts and inconsistencies in the evidence and determine the factual matters in a case. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). The hearing officer apparently gave considerable weight to the testimony of the claimant, the only witness to testify in person, and found it to be credible. This is within his province as set forth in Section 410.165(a) of the 1989 Act. The testimony of a claimant alone can be sufficient to establish that a compensable injury has been sustained. Texas Workers' Compensation Commission Appeal No. 94005, decided February 15, 1994; Texas Workers' Compensation Commission appeal No. 91083, decided January 6, 1992. Since there was evidence before the hearing officer that could be considered as sufficient to support his findings and conclusions, there is no basis or reason to disturb his decision.

With regard to the assertion that the hearing officer's decision was void since it was not timely rendered or distributed as provided in Rule 142.16(c) and (d) (which generally provide for a decision to be filed no later than the 10th day after the close of the hearing and to be distributed within seven days after such filing), we have held that the rule is not of a mandatory nature and does not affect the validity of the Decision and Order. Texas Workers' Compensation Commission Appeal 94001, decide February 10, 1994; Texas Workers' Compensation Commission Appeal No. 93955, decided December 8, 1993; Texas Workers' Compensation Appeal No. 92456, decided October 8, 1992.

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge