

APPEAL NO. 950066
FILED FEBRUARY 24, 1995

Following a contested case hearing held on December 12, 1994, the hearing officer made certain findings of fact and concluded that the respondent (claimant) sustained a compensable injury on _____, and that she has had disability from that injury beginning on May 26, 1994, and continuing to the present. Pursuant to the Texas Workers' Compensation Act, TEX. LAB CODE ANN, § 410.202(a) (1989 Act), the appellant (carrier) has requested our review challenging for insufficient evidence three findings of fact as well as the two dispositive legal conclusions and the decision and order. The carrier's thesis is that the "many inconsistencies when viewed as a whole create an evidentiary situation that does not support the hearing officer's findings of fact and conclusions of law."

The response filed by the claimant, which simply urged the sufficiency of the evidence, was untimely and will not be considered.

DECISION

Affirmed.

Claimant testified that at about 6:00 p.m. on _____, a Saturday, while leaving the plant where she was employed her right leg slipped forward and she then fell backwards onto the cement floor injuring her neck, back and right knee. (Mr L), a coworker, testified that while he did not see claimant fall, she was walking toward the exit and told him she had fallen and he saw her brushing off sawdust. Similar statements from (Mr. G) and (Ms. G) were in evidence. Claimant said that coworker (Ms. H), who was also nearby, suggested she report the incident to her supervisor, (Mr. E), and that she did so before leaving the plant, telling Mr. E that she fell and felt as though it was "hard to breath."

The statement of Ms. H said that she was leaving the plant and saw claimant leaving the plant at the same time going towards another exit, that while she did not see the actual fall she did see claimant going backwards, that when she got up claimant said, "I fell," that she went with claimant to see Mr. E, and that she, Ms. H, told Mr. E that claimant had fallen. Ms. H also stated that claimant had said that her neck was hurting. Mr. E testified that on that Saturday claimant came to him and "told me she had slipped in the hallway and fallen" and had hit her knee, that he discussed her going to the clinic but that she indicated she was all right and departed. Claimant testified that on the following Monday she visited the employer's clinic and was referred to the medical clinic used by the employer where she was seen, treated and released to return to work. Claimant further testified that on May 25th she changed treating doctors to (Dr. C) who took her off work that day and has not yet released her to return to work. Mr. E also testified that on May 25th claimant stood around and would not perform her job (operating a machine which sewed labels on trousers) because she was in too much pain. He said that at his suggestion she finally went home.

Employer's medical assistant, (Ms. K), testified that claimant came to employer's clinic on (date) to advise that she had fallen the previous Saturday; that on May 25th both claimant

and Mr. E came in to discuss her ability to work and that claimant explained the pain she experienced in reaching over and pulling the trousers on the rail to affix labels to them; and that on May 26th claimant came in with a note from a different doctor.

The medical clinic records show that on May 9th claimant stated a history of falling backwards at work on _____, was diagnosed by (Dr. S) with acute cervical, thoracic, and lumbosacral sprains, and was prescribed a few days of physical therapy, medication, a cervical collar and a lumbosacral brace, and was released to return to work with a number of restrictions including repetitive bending and overhead reaching. On May 26th claimant was seen by Dr. C who diagnosed cervical, lumbar and right knee sprain/strain and took her off work "until further notice" to avoid aggravation of her condition, noting that her prognosis was "[g]uarded due the severity of her injuries and the amount of weakness in her joints and articulations."

The carrier challenges factual findings that on _____ claimant slipped on the floor at work and fell injuring her neck, back and right knee, that she immediately told her supervisor of her injury (timely notice of injury was not a disputed issue), and that she has not been released to return to work. As can be seen from the above recitation, there is evidence in the record to support these findings and we regard it as sufficient. Further, we regard the findings as sufficient to support the legal conclusions of the hearing officer that claimant sustained a compensable injury on _____ and has had disability (Section 401.011(16)) beginning on May 26th and continuing through the date of the decision. The hearing officer is the sole judge of the materiality and relevance of the evidence, as well as the weight and credibility it is to be given. Section 410.165(a). It is for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In that regard, we do not find the evidence nearly so replete with conflicts as does the carrier. In any event, as an appellate level body we will not substitute our judgment for that of the hearing officer, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for sufficiency of the evidence, we will reverse it only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We find the evidence sufficient to support the determinations of the hearing officer.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge