APPEAL NO. 950076
FILED FEBRUARY 24, 1995

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). Following a contested case hearing held on November 9, 1994, at which the appellant (claimant) failed to appear, the hearing officer, conducted another hearing on December 15, 1994, and took evidence on claimant's good cause for his failure to appear and also on the merits of the two disputed issues, to wit: whether claimant sustained a compensable injury on _____, and whether he had disability resulting from such injury. The hearing officer determined that claimant did not have good cause for failing to appear at the first hearing and concluded that claimant did not sustain a compensable injury on _____ and did not have disability therefrom. Claimant's appeal seeks our review on the two disputed issues, attaches documentation of his being learning disabled, and contends his condition prevented him from adequately preparing for the hearing. The respondent (carrier) asserts the sufficiency of the evidence to support the challenged findings and asks the Appeals Panel to disregard the new evidence claimant brought forward for the first time on appeal.

DECISION

Affirmed.

The plant superintendent, (Mr. F), testified that claimant commenced employment on June 6, 1994, and was terminated on July 14, 1994, for excessive absenteeism. Claimant testified that he was 19 years of age, had a 10th grade education, and was in a "transitional class." We do not consider the special education assessment claimant attached to his appeal since our appellate review is limited to the record developed at the hearing. *See* Section 410.203(a) and Texas Workers' Compensation Commission Appeal No. 941663, decided January 16, 1995. Claimant further testified that on _____ a Monday, while working as a cardboard corrugating machine operator, he slipped on a piece of cardboard and fell. He said the accident was not witnessed and that he did not report it to a nearby supervisor, apparently (Mr. O), for fear of losing his job. Claimant said he did not come to work the next day because his back hurt. He worked on _____ and said he encountered problems lifting heavy stacks of cardboard because Mr. O was not helping him as he was supposed to be doing, and that he complained of the problem to (Mr. B) and also told Mr. B his back was hurting. Mr. B, the corrugator supervisor, testified that claimant did complain about lifting the cardboard stacks and that he went out to the work area and told Mr. O to show claimant how to adjust the cardboard so he could pick it up without difficulty. Mr. B denied that claimant told him his back was hurting. Claimant introduced a statement from (Ms. PM) in which she corroborated the essential details of claimant's testimony and said she tried to get him to go to a doctor after he came home from work on _____ but that he refused so she gave him some medications. Claimant introduced a statement from (Mr. A) stating that he was present "or about" _____

when claimant came home from work and could hardly walk because of the back pain he had from slipping on some cardboard at work. Claimant introduced a similar statement from (Ms. D).

The carrier introduced a statement from coworker (Mr. R) stating that during the entire time he worked with claimant, claimant did not say anything about an injury. A statement from Mr. O indicated he was unaware of claimant's having a back injury nor was he notified of such injury.

Claimant testified that he first sought medical attention for his back injury about three weeks later because his back was hurting and that he is currently unemployed and cannot work because of his back. Claimant also introduced a November 9, 1994, letter from (Dr. A), stating that claimant presented on July 28th stating he had injured himself at work on _____, that certain specified tests were positive, and that x-rays revealed a right pelvic tilt, lumbar rotations at L2-3, and a slight retrolisthesis of L2 or L3. The letter further stated that Dr. A had treated claimant for a prior workers' compensation injury which occurred on (previous date of injury), and had released him from care on November 5, 1993.

(Ms. M), the employer's personnel manager who handles the workers' compensation claims, testified that the employer was unaware of claimant's injury until July 18th when claimant's mother called her asking why claimant had been terminated. After Ms. M advised claimant's mother that she did not know the reason for the termination, claimant's mother, according to Ms. M, then asked if she knew that claimant had hurt his back on _____.

The hearing officer found that on or about _____, claimant did not injure his back or any other part of his body while at work for the employer and that after that date his inability to obtain and retain employment at his pre-injury wages was not due to any alleged injury occurring at work. We are satisfied the evidence, though in conflict, sufficiently supports these findings. Claimant had the burden to prove with a preponderance of the evidence that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The testimony of the claimant alone may be sufficient to prove both a compensable injury and disability. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. However, the testimony of the claimant, as an interested party, only raises an issue of fact for the hearing officer to resolve. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer may believe all, part, or none of the testimony of any witness, including the claimant. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The hearing officer could consider the inconsistencies in claimant's evidence concerning the date he was injured as well as the conflicts between his testimony and other evidence as to whether he fell and

hurt his back as he claimed. It is for the hearing officer as the fact finder to resolve such evidentiary conflicts and inconsistencies. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, 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). We do not find the hearing officer's findings and conclusions to be so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 632, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge