

APPEAL NO. 980010

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 9, 1997, a contested case hearing (CCH) was held. With respect to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1996 unless otherwise noted), and, therefore, did not have disability.

Claimant appeals, contending that she had sustained a compensable lifting injury, that the “salesman wasn’t 100% sure” where he had put a box of picante sauce, contested that her supervisor was present on the date of injury, and contending that she has been unable to work since November 8th. Claimant requests that we reverse the hearing officer’s decision and render a decision in her favor. The respondent school district, referred to as self-insured, urges affirmance.

DECISION

Affirmed.

We will first note that the evidence is in conflict on a number of details, initially including the date of injury and subsequently whether claimant’s supervisor, (Ms. F), was present the day of the injury. We also note that claimant placed into evidence a diagram of the workplace and that Ms. F also testified from another diagram that she had prepared but was not in evidence. Consequently, it is a little difficult following Ms. F’s testimony using claimant’s diagram, which was “rougher” than Ms. F’s diagram.

Claimant, who is 53 years old, was employed as a baker in one of the self-insured’s cafeterias. Claimant testified that on Wednesday, _____, as she was moving a box containing four one-gallon jars of picante sauce (the box) from her worktable to Ms. F’s desk, her arm “start[ed] like a twitch.” At the heart of the issue is whether the box had been placed at claimant’s workstation or had been placed elsewhere. The deliveryman/salesman (Mr. T), in a statement, says that he places such deliveries either by the sink or on Ms. F’s desk, not at claimant’s workstation. Claimant said that she continued working her shift, but that evening at home her arm began to hurt and that she took some Advil and laid down. Claimant said that she worked the following day, but was experiencing pain in her arm. It is undisputed that one or more coworkers asked what was wrong with her arm and that claimant complained of pain and said that she thought it was arthritis. Claimant went to the doctor on November 8th, as discussed below, continued to have arm pain over the weekend, saw the doctor again on November 11th and called self-insured’s superintendent, (Mr. S), on Monday, November 11th and, after asking about group health benefits (and being told those benefits had not yet been “approved”), reported a work-related injury. There was initially some misunderstanding as to the date of injury which caused some reporting problems.

Claimant saw (Dr. R) on November 8th. Dr. R's handwritten progress note of that date indicates "shoulder & around & under shoulder down to elbow hurting x 3 days." Neither that progress note nor another note of November 14th appear (notes are handwritten and difficult to decipher) to reference a work-related injury. An Initial Medical Report (TWCC-61) with an illegible date references a history of "[p]ain in (L) shoulder radiating to (L) elbow x 3 days" and that claimant stated that the pain was caused "lifting heavy objects at work." Claimant was eventually referred to Dr. D'Alise (Dr. D) on January 6, 1997, who, in a report of that date, recites a history that claimant "suffered a neck injury from lifting a heavy box" and that claimant, at the time, "complained of severe neck pain radiating into the left arm." Dr. D's examination showed "a significant degenerative disease consistent with cervical spondylosis." Dr. D concludes that he believes claimant "has longstanding cervical spondylosis with a recent onset of radiculopathy, probably due to a disk herniation at the C5-6 level." Dr. D ordered an MRI. An MRI performed on January 30, 1997, showed no herniation but rather a "severe canal compromise" from C4 through C7. In a report dated September 22, 1997, Dr. D stated:

It is my feeling that she had an underlying degenerative cervical spondylosis which was exacerbated by her incident at work. It is not unusual for patients with longstanding degenerative diseases to have a marked deterioration following a single isolated event.

Claimant has not worked since November 7th and both Dr. R and Dr. D have taken her off work. Dr. D, in a report dated October 8, 1997, recommends "a spinal cord decompression procedure" as perhaps claimant's "only chance to regain the ability to return to work."

The hearing officer, in his Statement of the Evidence, notes some of the conflicts in the testimony and evidence, notes that Mr. T said that he had put the box on Ms. F's desk and that Mr. T "noted that placement of the box as alleged by Claimant would be out of the way to the dry storage area." The hearing officer concluded:

While it appears that an incident occurred that exacerbated Claimant's underlying condition, Claimant has not established, by a preponderance of the evidence, that the incident occurred during the course and scope of her employment.

Claimant appeals, reiterating her testimony and position and emphasizing that Mr. T "wasn't 100% sure of not putting the box on my working station. . . ."

As we have stated many times, the hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove a claim, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ

ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look to all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it 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 could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

In that we are affirming the hearing officer's determination that claimant had not sustained a compensable injury, claimant cannot, by definition (Section 401.011(16)), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge