

APPEAL NO. 980182
FILED MARCH 12, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 12, 1997. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (date of injury), and that he, therefore, did not have disability within the meaning of the 1989 Act. In his request for review, the claimant essentially argues that those determinations are against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on (date of injury), he was delivering some sheet metal siding to a customer, when a bee got behind his safety glasses and stung him on the left eyelid. He stated that he had to let go of a metal culvert that was stacked on top of the siding when he attempted to get the bee out of his glasses and that the culvert rolled off the truck, striking him on the neck and left shoulder and causing him to fall to the ground. The claimant testified that he called his employer on the radio in his truck and told (Mr. B), the sales manager, about his injury. He stated that Mr. B told him that he could not understand the claimant and advised him to keep working. The claimant testified that Mr. B was not at work the next day, but he stated that he told several of his coworkers, including the man who acted as the supervisor in Mr. B's absence, about his injury. On (subsequent date of injury), the claimant was involved in an accident, where he struck another vehicle with the company truck. On cross-examination, the claimant acknowledged that he did not seek medical treatment until after that accident; however, he maintained that he had not been injured in the motor vehicle accident. The claimant stated that he last worked for the employer on either June 20 or 24, 1997, and that he has not been able to work since that time because of the injury he sustained to his neck and left shoulder.

Mr. B testified that he did not learn that the claimant was alleging a work-related injury until June 5, 1997. On June 5th, Mr. B wrote the claimant up because he had been sleeping in his truck on two occasions and because he was not in an area where he should have been when he was involved in the motor vehicle accident on (subsequent date of injury). Mr. B further testified that the claimant did not directly tell him about his alleged injury; rather, Mr. B overheard the claimant "ranting and raving" about the injury after he had been written up. Mr. B stated that he could not recall the claimant's having called him on the radio to report the injury on (date of injury).

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Whether a claimant suffered a compensable injury is a fact question to be resolved by the hearing officer. The hearing officer is the sole judge of the weight, credibility, relevance and materiality of the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of any witness and could properly decide what weight he would assign to the other evidence before him. *Id.* We will not substitute our judgment for that of the hearing officer where his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

While we have generally noted that an injury may be established by the testimony of the claimant alone, Texas Workers' Compensation Commission Appeal No. 931002, decided December 13, 1993, it is well established that a hearing officer is not bound to accept a claimant's testimony at face value; rather, it only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). As the fact finder, the hearing officer was free to reject the claimant's testimony about the injury, to resolve the conflicts and inconsistencies in the testimony and evidence against the claimant, and to infer, from Mr. B's testimony to that effect, that the claimant's claim was a "spite claim," which followed his having been disciplined. The hearing officer specifically noted that the claimant's testimony was "not credible." Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for our reversing the hearing officer's decision on appeal. Pool, *supra*; Cain, *supra*. Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability because the existence of a compensable injury is a prerequisite to a finding of disability. Section 410.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge