

APPEAL NO. 980186  
FILED MARCH 16, 1998

Following a contested case hearing (CCH) held on January 6, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on or about \_\_\_\_\_, and that he therefore did not have disability resulting from the claimed injury. Claimant has appealed, contending he established his compensable injury and disability by a preponderance of the evidence. The respondent (carrier) has responded, urging the sufficiency of the evidence.

DECISION

Affirmed.

The hearing officer's decision and order contains a detailed recitation of the evidence with which neither party takes issue and we adopt it for purposes of this decision. Accordingly, we mention only such evidence as is necessary for our decision.

Claimant testified that on the morning of \_\_\_\_\_ (all dates are in 1997), a Wednesday, he and a coworker, whose name he could not recall, were disassembling lengths of a rubber hose through which concrete had been pumped on a construction job, that as they carried one of the sections of the hose, which he said had some concrete in it, it slipped from his coworker's grasp, that all the weight shifted to claimant, and that his back was injured. Claimant said the accident was witnessed by (Mr. GA), that he told Mr. GA he had hurt his back, and that Mr. GA advised him to tell the supervisor. He also said he saw the supervisor, (Mr. GO), on the day of the accident but did not tell him he had hurt his back. In evidence was a note from coworker (Mr. JS) stating that he worked with claimant on \_\_\_\_\_, and that claimant notified him he hurt his back doing his job duties.

Claimant further testified that he was in pain all night and could not get out of bed the next day, and that he called the employer's secretary, (Ms. J), that day advising that he was "ill," that he told her to tell (Mr. BS) that he would not be coming to work, that on Friday he told Ms. J to ask Mr. BS to bring him his check, that on Monday he talked to (Mr. H), the project superintendent, about seeing a doctor, that he eventually saw (Dr. B) who told him to go home and rest, that Dr. B referred him to (Dr. H) and to (Dr. W), that he was told he had a herniated disc, and that the doctors told him he could not work.

Mr. GA testified that he saw claimant on the morning of \_\_\_\_\_, and worked near him, that he also saw claimant near the end of the shift, that he did not see claimant or a coworker drop a pipe, and that he did not advise claimant to speak to the supervisor about a back injury. Claimant stated that Mr. GA testified in this fashion to save his job.

Mr. BS testified that he had known claimant since they were in school, that he hired claimant about six months before the claimed injury, that he was not on the job site on \_\_\_\_\_, and that claimant had missed work on prior occasions and did not always have good excuses. He also said that the disassembled sections of pipe would not have concrete in them because they are sponged out after the pour. Mr. BS also testified that when he gave claimant's paycheck to claimant's friend, (Ms. M), she advised that claimant had worked that day for (Mr. B), who operated a paint and body shop. Ms. M testified to the contrary and Mr. B's note stated that claimant had not worked for him for two years.

In her recorded statement, Ms. J stated that when claimant called in on \_\_\_\_\_, he said he was not coming to work because he had a stomach ache and that when he called in on \_\_\_\_\_, he said his back was hurting from lifting a pipe at work which they had dropped.

Dr. B wrote on April 27th that he saw claimant on April 8th and April 23rd for acute low back pain "that historically occurred on the job." An August 24th MRI report revealed a large extruded disc at the L4-5 level which "almost certainly impinges on the nerve root exiting on the right side at this level." Dr. W wrote on September 30th that claimant cannot work through October 31st and that his prognosis is good with surgery.

Claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of his employment and that he had disability as defined in Section 401.011(16). These issues presented the hearing officer with questions of fact to resolve and it is the hearing officer who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and who, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). As an appellate reviewing tribunal, we will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer indicates that he was not persuaded that claimant's testimony was credible. The hearing officer could consider the various conflicts between claimant's testimony and the testimony and statements of other witnesses.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill  
Appeals Judge

CONCUR:

Judy L. Stephens  
Appeals Judge

Christopher L. Rhodes  
Appeals Judge