

APPEAL NO. 980261  
FILED MARCH 27, 1998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was convened on November 4, 1997, in (City 1), Texas. Attorneys representing both parties were present, but the claimant was not. A CCH was held on January 12, 1998, with (hearing officer) presiding as hearing officer. He determined that on \_\_\_\_\_, the respondent (claimant) sustained an injury to his left leg in the course and scope of his employment when a cabinet he was lifting fell on him; that the claimant reported the claimed injury to his supervisor on that day; and that, except for 20 days, the claimant had disability beginning on January 21, 1997, and continuing through October 31, 1997. The appellant (carrier) requested review, urging that the determinations of the hearing officer are against the great weight and preponderance of the evidence and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urging that the evidence is sufficient to support the decision of the hearing officer and requesting that it be affirmed.

DECISION

We affirm.

The claimant testified that on \_\_\_\_\_, in (City 2), Texas, he was unloading cabinets from a truck; that a cabinet, above where he was standing, fell on him and hit his left leg; that he fell on his back; and that two people saw him fall. He said that he had pain in his left leg; that he was unable to work for about 15 minutes; that about five minutes after the accident, Mr. D, his supervisor, came to where he was; that Mr. D saw that he was not working and asked what had happen and if he was all right; that he told Mr. D what had happened and that he would be all right and could finish the job if he was given time to regroup; that about halfway through unloading the cabinets, Mr. D had someone help him because he was too slow in unloading the cabinets; and that during the return trip to City 1, Mr. D asked him if he would be okay. The claimant stated that on the return trip Mr. D could see that he was in pain and asked him if he would be okay. The claimant testified that four days later he could not walk because of the pain, that he went to an emergency room, that he told them what had happened, and that the diagnosis was cellulitis. He testified that on February 1, 1997, he went to the hospital; that he was told that he had blood clots; that he stayed in the hospital for 10 days; that he was placed on coumadin for six months; and that he was taken off work for six months. He stated that he called another supervisor in February or March 1997 and told him what had happened, but that he had also told Mr. D what had happened the date that he was injured. The claimant said that he was released to return to work on November 1, 1997, and that, prior to being released to return to work, he worked 20 days for a temporary agency.

The testimony of Mr. S, a coworker, corroborated the testimony of the claimant that he was struck by a cabinet and that he reported it to Mr. D on the same day. An adjuster questioned Mr. D on April 7, 1997. The questions were asked as if the claimed incident occurred on January 2, 1997. Mr. D said that he is the installation manager for the employer; that the claimant was the lead person to unload trucks; the claimant worked when work was available; that one night another person called him and told him that the claimant was sick, had stomach problems, and would not be able to work the next day; that he is not sure what day that was; that the claimant never came back to work; and that later another worker told him that the claimant had a blood clot from a cabinet falling on him. Mr. D said that on the return trip from City 2 the claimant was quiet and stated that he was real sick.

The claimant was seen in an emergency room on January 24, 1997, for left lower extremity pain and swelling. A radiologist reported that the left femoral and popliteal veins were evaluated using segmental compression and doppler, that no evidence of acute deep venous thrombosis (DVT) was seen, that normal tests exclude significant occlusion of the calf veins, and that there was no acute DVT. The claimant was admitted to a hospital on February 1, 1997; an MRI revealed liver lesions, DVT in the left leg was diagnosed, and the claimant was placed on coumadin for the DVT.

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 [14<sup>th</sup> Dist.] 1984, no writ). The hearing officer judges the credibility of witnesses and resolves conflicts and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. 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 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 judgement 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). The hearing officer determined that the claimant injured his left leg in the course and scope of his employment on \_\_\_\_\_; that he reported the injury to Mr. D on the same day; and that, except for 20 days, the claimant had disability beginning on January 21, 1997, continuing through October 31, 1997. That different determinations could have been made based on the same evidence is not a sufficient basis to overturn the determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 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.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Alan C. Ernst  
Appeals Judge