

APPEAL NO. 990067

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 commenced on December 4, 1998, with the record closing on December 18, 1998. The issue at the CCH was as follows:

Was the claimed injury caused by the Claimant's wilful intent to unlawfully injure another person or the act of a third person intending to injure the Claimant because of personal reasons and not because of the employment, thereby relieving the Carrier of liability for compensation?

The hearing officer determined that the appellant's (claimant herein) injury was caused by the claimant's wilful intent to unlawfully injure another person and that the claimant's injury was caused by the act of a third person intending to injure the claimant because of personal reasons and not because of the employment. The hearing officer concluded that the carrier was relieved of liability. The claimant appeals challenging a number of the findings of the hearing officer and arguing that he was injured when he was attacked for reasons relating to his employment. The respondent (carrier herein) replies that the findings and decision of the hearing officer are sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarized the evidence in her decision and order. We will therefore only briefly touch on the evidence germane to the appeal. On _____, there was a fight among several employees on the employer's premises. The fight involved [WG] and [MM] on the one hand and the claimant and his brothers, [AV], [MV] and [JV], on the other. There was conflicting evidence concerning the details of the fight and also for the reasons for the fight.

The hearing officer made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant lived within seventy-five (75) miles of the City 1 Field Office on _____, and was an employee of the Employer on that date.
2. The Employer was a subscriber to a policy of workers' compensation insurance issued by the Carrier on _____.

3. On _____, the Claimant, along with his three (3) brothers, arrived at the Employer's premises thirty (30) minutes before the end of the workday to collect their paychecks.
4. [MV], the Claimant's brother, entered the Employer's premises to retrieve the paychecks for himself and all of his brothers; while there, he became involved in a fist fight with co-worker [WG].
5. The cause of the physical confrontation between [MV] and [WG] cannot be determined from the evidence presented, but as a result of that confrontation, [MV] had an obvious black eye.
6. After [MV] and [WG] had ceased fighting, the Claimant and his other two (2) brothers entered the Employer's premises upon a signal from [MV].
7. When the Claimant entered the Employer's premises, he observed his brother [AV] begin fighting with [WG].
8. The Claimant threw rocks at [WG] and [MM], who was fighting with [JV], another brother of the Claimant.
9. [MM] extricated himself from the fight he was having with [JV], chased the Claimant, caught the Claimant, placed the Claimant in a supine position on the ground, and immobilized his legs.
10. [WG] attacked the Claimant with a knife and a hammer while [MM] restrained the Claimant.
11. As a result of the attack by [WG], the Claimant sustained broken bones in his hand and cuts and bruises.
12. Before the Claimant was restrained by [MM] and struck by [WG], the Claimant intended to injure [WG] and [MM] when he stoned them.
13. The Claimant was attacked by [WG] and [MM] for personal reasons and not because of the work that either of them performed for the Employer.

CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to resolve this case.
2. Venue is properly placed in the City 1 Field Office.

3. The claimed injury was caused by the Claimant's wilful intent to unlawfully injure another person, thereby relieving the Carrier of liability for compensation.
4. The claimed injury was caused by the act of a third person intending to injure the Claimant because of personal reasons and not because of the employment, thereby relieving the Carrier of liability for compensation.

The claimant challenges the hearing officer's Findings of Fact Nos. 5, 6, 7, 8, 9 and 13 as well as the hearing officer's Conclusions of Law Nos. 3 and 4. The claimant argues that the hearing officer's findings of fact are contrary to the evidence. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We will review the claimant's challenges to the hearing officer's findings of fact applying this standard.

There was certainly conflicting evidence about the details of the fight that took place on _____. The claimant obviously has a different interpretation of some of the evidence from the hearing officer. The hearing officer is the finder of fact and we do not find that her findings of fact were contrary to the overwhelming evidence.

It was essentially claimant's position at the CCH and on appeal that there was animosity between WG and claimant's brothers due to the fact that WG had fired him and two of his brothers and WG had been demoted for taking this action, while he and his brothers had been rehired at a higher wage than before the firing. There was evidence contrary to this in the testimony of the owner of the employer that WG's demotion had nothing to do with the firing of the claimant's brothers. The hearing officer obviously chose to give greater weight to this contrary evidence.

Section 406.032 provides as follows in relevant part:

An insurance carrier is not liable for compensation if:

(1) the injury:

* * * *

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

* * * *

Applying these provisions to the hearing officer's factual determinations, we find that her findings of fact support both her conclusions of law and her decision regarding compensability. Thus, the decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge