

APPEAL NO. 990130

Following a contested case hearing held on December 16, 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 _____, and that he did not have disability. Claimant has appealed, contending that his documentary evidence proved that he sustained the claimed injury and thereafter had disability. The respondent (carrier) contends in response that the evidence is sufficient to support the challenged factual findings and legal conclusions.

DECISION

Affirmed.

The parties stipulated that on _____ (all dates are in 1998 unless otherwise stated), claimant was employed by (employer) and other evidence indicated that he was a yard laborer and had been employed since sometime in February 1998.

Claimant testified through a Spanish language translator that, after arriving at work on _____, he commenced cleaning up debris under a conveyor belt which transported rocks up to the hopper of a crusher machine and that while he was bent over shoveling, a concrete rock the size of a grapefruit fell from atop the crushing machine and struck him in the neck, injuring him and causing pain in his neck and his eyes. He said that shortly thereafter, he was called to a meeting with Mr. D, the plant manager, and Mr. C, the general foreman, to discuss his recent absenteeism, which he said was caused by car trouble; that he reported the injury to them and was told to return to work and be careful; and that shortly after returning to work, he was summoned to again meet with Mr. D and Mr. C and was then advised that his employment was terminated. Claimant said he then went home to advise his wife, who speaks English; that she accompanied him to talk to Mr. H, the operations manager, about his job and his injury; and that following this meeting, he went to a hospital emergency room for treatment. Claimant further testified that he worked for another company in late July and early August but had to stop work due to chest pain, which he said could have been caused by the neck injury.

Both Mr. D and Mr. C testified that claimant had been summoned to meet with them shortly after 8:00 a.m. on _____ where his absenteeism and "attitude" problems with fellow employees were discussed, that claimant became very upset and became aggressive at the meeting, and that he was told to go back to work. Mr. C further testified that he concluded from claimant's behavior that he had some kind of problem and was not subject to the employer's control and that his employment should be terminated; that he sent for claimant, who had only left his office a couple of minutes earlier to return to work; and that when claimant returned to his office and was advised that his employment was terminated, claimant stated that a rock had fallen on his neck and injured him. Mr. C further stated that he did not feel claimant would have had time to get back to the conveyor belt,

after leaving his office after the first meeting, before returning for the second meeting. Mr. D, whose testimony generally corroborated that of Mr. C, also stated that they offered claimant medical treatment and he declined it and left the office. Both said that while it was "possible" a rock could have fallen on claimant, they doubted it given his location at the conveyor belt in relation to the location of the hopper and said they could see no evidence of an injury when they visually examined claimant's neck in the office. Mr. H, too, stated that claimant did not appear to have an injury when he came to his office with his wife and that he seriously doubted that a large rock could have bounced out of the hopper and struck claimant.

A hospital report of _____ states that claimant presented, complaining that a brick fell off a truck and struck him on the head at work, that no sequellae were noted, that he re-presented on April 7th on the advice of a lawyer, complaining of blurry vision, and that his acuity was 20/20. Another report reflected the diagnosis as "closed head injury" and the treatment as Tylenol for headache with instructions to return if he had nausea or vomiting or other symptoms change. The Initial Medical Report (TWCC-61) of Dr. O, a chiropractor, states the date of injury as "3-31-98," the history as a rock jumping from the machine and hitting claimant in the neck, and the diagnoses as acute, severe cervical and thoracic sprains/strains, bilateral trapezius strain, and acute, severe neurovascular cephalgia.

In addition to the dispositive conclusions of law, claimant's request for review challenges findings that he sought treatment on March 3rd and the medical reports do not indicate that he had any damage to the physical structure of his neck at the time of the examination; that claimant did not suffer damage to the physical structure of his neck in an incident at work on _____; and that claimant's alleged injury did not prevent him from earning wages equivalent to his wages before _____ at any time.

Claimant had the burden to prove by a preponderance of the evidence that he sustained an injury in the course and scope of employment and that he had disability as defined in Section 401.011(16). Injury is defined in Section 401.011(26) as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. While a claimant's testimony alone may generally be sufficient to prove both an injury in the course and scope of employment and disability, a hearing officer is not bound by such testimony in that a claimant is an interested party whose testimony only raises questions of fact to be resolved by the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence and, 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, the Appeals Panel does 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. The hearing officer could consider that Messrs. D, C, and H saw no indication of injury to claimant's neck when they looked at it shortly after the alleged incident and that the hospital record reflected no objective signs of injury. Since we affirm the determination

that claimant did not sustain the claimed injury, he did not, by definition, have disability and that determination is likewise affirmed.

We affirm the decision and order of the hearing officer.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge