

APPEAL NO. 990254

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 issue by finding that the appellant (claimant) did not sustain a head injury as a result of a motor vehicle accident (MVA) in which he was involved on _____, and that his tinnitus, sinus wall fracture and resulting infection are not a result of that accident. Claimant has appealed, urging that his doctors and a coworker could have proved his claimed injuries from the MVA had they been called to testify at the hearing. The respondent's (carrier) reply sets forth in detail the evidence it contends is sufficient to support the hearing officer's determination.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____, and the record indicates that the carrier accepted liability for claimant's neck and right shoulder injury. The record also indicates that the disputed issue of disability was withdrawn because claimant asserted that he had disability from the neck and shoulder injury as well as the additional injuries he was claiming, and the disputed issue of the timeliness of the carrier's contest of compensability was resolved by agreement during the hearing that the carrier's contest was timely.

Claimant testified that he was a truck driver by occupation; that he was involved in an MVA in 1993 which resulted in a cervical spine fracture which was treated with a collar; and that prior to the _____, MVA, he was aware he was having some hearing loss but did not suffer from tinnitus or headaches. Regarding the _____, MVA, claimant stated that he was driving a sleeper cab tractor pulling two trailers on an undivided highway in (State) destined for (City A) when a Ford Mustang with three young men suddenly veered across the yellow line and headed straight for his truck. He said he steered to the right and the Mustang collided with the left front tires of the first trailer, blowing those tires out; that he and his driving partner, Mr. V, both wore seat and shoulder belts; that he was thrown about by the impact but could not recall any of his body parts hitting anything in the truck cab; and that he kept the truck under control and got it stopped. He said that after bouncing off his truck, the Mustang was hit by another vehicle traveling behind his truck; that he got out of the truck, went back to the site of the other collision, and saw that the two young men in the front seat were dead and that a third young man in back seat was in very bad condition. He indicated that the third young man also died.

Claimant, who acknowledged not having sought any medical treatment at the accident scene, further testified that after the wheels were repaired, Mr. V drove the rig to the employer's (City B) terminal while he slept, that while he was at the terminal, he thought he was having a heart attack and sought treatment at a hospital emergency room where he was advised he was suffering from anxiety; and that he flew home to City A. Claimant

indicated that he was thereafter treated for his neck and shoulder injuries, including cervical spine surgery in March 1998; that sometime after the MVA, but not immediately, he began to have headaches which became increasingly severe and also began to experience ringing in his ears and increased hearing difficulty; that he saw numerous doctors and underwent numerous tests and treatments; that he used his group health insurance because he was "out of it" and did not know what he was doing; and that in the summer of 1998 he underwent two operations on the front of his head for an osteoma, a sinus wall fracture, and an infection or epidural abscess. Claimant contended that he suffered a head injury from the MVA which caused his tinnitus, sinus wall fracture, and infection and he relied on the opinions of his neurosurgeon, Dr. K, Dr. D, and Dr. NW.

Dr. K wrote Dr. NW on June 29, 1998, stating that claimant was involved in an MVA months ago; that over the last several weeks he developed a constant right frontal headache; and that testing reveals he has an osteoma involving the left frontal sinus and a right-sided frontal epidural process most consistent with an abscess and "most likely as the result of a chronic right frontal sinusitis." Dr. K wrote a "To Whom It May Concern" letter on July 28, 1998, stating that claimant's symptoms began after the MVA; that "it is not unreasonable to assume that [claimant] suffered an undiagnosed skull fracture at the time of the [MVA]"; that the skull fracture may very well have involved the frontal sinuses which then seeded the epidural space leading to the epidural abscess; and that he does not believe it unreasonable to assume that claimant's "intracranial problems resulted from the severe [MVA] in which he was involved."

Dr. D, an infectious disease specialist, wrote Dr. K on August 18, 1998, stating, "I feel likely the epidural abscess was directly related to some sort of communication between the brain and the frontal sinus associated with his previous [MVA]."

Dr. NW, an ear, nose and throat [ENT] specialist, wrote to Dr. M, claimant's chiropractor, on August 6, 1998, stating that over the weeks following claimant's March 1998 cervical spine surgery he developed a frontal headache that became severe and associated with fever and that an MRI scan showed an osteoma and frontal sinusitis. Dr. NW further stated that the most likely scenario was that the preexisting osteoma, which was in contact with the sinus walls, directly transmitted force to the posterior sinus wall next to the brain, "resulting in a fracture at the time of the [MVA]," which most likely provided a portal for infection. Dr. NW wrote on September 6, 1998, that it was highly likely that the majority of claimant's hearing loss came from exposure to increased noise levels on his job as a truck driver.

Dr. DM, an ENT specialist, testified that he reviewed approximately 300 pages of medical records and that in his opinion, claimant did not suffer a head injury in the MVA, noting that had claimant's head struck some object hard enough to fracture a sinus wall, there would have been subjective evidence of a such a blow apparent to doctors who saw him in City B and later, and that the medical records contained no evidence of such. He further stated that the medical records revealed that claimant had a hearing loss and tinnitus before the MVA and opined that he would not expect the MVA to have caused hearing loss

but that it possibly could have aggravated tinnitus. Dr. DM further stated that he reviewed the opinions expressed by Dr. K. Dr. D, and Dr. NW and felt they inferred that claimant sustained a head injury in the MVA which could possibly have caused an injury to the back wall of the sinus cavity. However, he felt that a violent throwing about, twisting, or turning of claimant's head would not cause a sinus posterior wall fracture and that it would take a blunt force to the front of the head to do that and there was no evidence in the records that claimant's head was injured. He also noted that it would take approximately 20 years to grow an osteoma of the size claimant had, that osteomas generally grow spontaneously, and that claimant's osteoma was attached to the posterior wall of the sinus and could have caused the infectious process by blocking the ventilation of the sinus.

Whether claimant's compensable injury of _____, extended to his tinnitus and sinus wall fracture and resulting infection presented the hearing officer with a question of fact to resolve. 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, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal, the Appeals Panel 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 could consider the absence of evidence of claimant's having sustained a head injury in the MVA and credit the testimony and opinions of Dr. DM.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge