

APPEAL NO. 990306

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 held on January 11, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury, the date of such injury, whether the claimant timely reported the injury or had good cause for failure to do so, and whether the claimant has disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, that the date of the claimed injury was _____, that the claimant did timely report an alleged injury, and that he did not have disability. The claimant, in a very brief note, states he does not agree with the decision and requests an appeal. The respondent (carrier) initially urges that the appeal is inadequate for an appeal under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3), and alternatively, that there is sufficient evidence to support the findings and decision of the hearing officer and that the decision and order should be affirmed.

DECISION

Affirmed.

Regarding the assertion that the appeal is inadequate, we agree that it is not specific in nature and broadly disagrees with the decision of the hearing officer. However, as we have previously stated, we will normally accept general statements of disagreement with a decision of a hearing officer when a pro se claimant files or sends timely correspondence to the Appeals Panel which states that there is disagreement with the decision made and that an appeal of the decision is sought. In such circumstances, we review the case to determine if there is evidence to support the decision. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992. *See generally*, Texas Workers' Compensation Commission Appeal No. 94973, decided September 1, 1994, and Texas Workers' Compensation Commission Appeal No. 93998, decided December 14, 1993. Accordingly, we conclude the appeal is minimally sufficient and will review the case to determine if there is evidence to support the decision.

The Decision and Order of the hearing officer fairly and adequately sets forth the evidence in the case and it will only be briefly summarized here. The claimant worked intermittently for the employer and testified that on _____, while unloading materials from a truck with coworkers, he stepped into an unpaved rut and twisted his left knee and left ankle. He also testified that he told a coworker, whom he thought was in charge, at the time but that he continued working. He states that he continued working until about April 22, 1998, when he woke up with his knee swollen and in pain. He called to report he could not work and subsequently went to a hospital. A medical report dated April 22, 1998, indicates a diagnosis of acute arthritis, left knee. The claimant subsequently began treating with Dr. P, who in a report dated July 2, 1998, indicated that the claimant is 5 feet, 9 inches tall, weighs 380 pounds, and reports an injury date on or about April 23, 1998. Dr. P's report indicated under diagnosis: rule out left knee derangement, lumbar HNP, lumbar

radiculopathy, and myofascitis. The claimant was subsequently referred to and seen by three other doctors with a report from October 7, 1998, with a diagnosis of internal derangement syndrome of the left knee, bilateral lumbar facet syndrome, myofascial pain syndrome, and rule out meniscal tear. In a December 22, 1998, letter, a Dr. D, who had examined the claimant, referenced a twisting accident at work on April 23, 1998, diagnosed a tear of the left medial and lateral meniscus, and opined that the injury is a direct result of the twisting accident of April 23, 1998.

The claimant testified that he did not tell his doctors that he was injured on April 23, 1998, and that it was a mistake they made. He related his injury date to a day he remembered working on a particular project. In a prehearing statement of May 4, 1998, the claimant was, as determined by the hearing officer, somewhat vague and inconsistent concerning the mechanism of the claimed injury, referring to a twisting action while on his knees laying tile and that his ankle gave out one time when unloading a truck sometime during March.

A statement of a coworker on the job with the claimant on the alleged date of injury was admitted and indicated that the claimant never complained of being injured to him. The owner of the tiling business testified that he was at the job site the morning of the alleged injury, that the area was paved and not rutted, and that he was not aware of any injury sustained by the claimant. He stated he worked with the claimant on subsequent days and did not hear of or see any indication of any injury. He stated that the last day the claimant worked for him, the claimant said he had knee problems but did not mention any injury. The first he heard of a claimed injury was through his (the owner) wife who worked in the business office.

The owner's wife, who the hearing officer describes as very credible, stated that the claimant came into the office on April 23, 1998, and said his left knee was swollen and he could not work, and that he needed assistance. It was suggested that he might apply for unemployment benefits. The claimant did not indicate he was injured on the job, but when advised that he had not worked long enough to be covered by group health coverage, he then asked if a workers' compensation claim could be filed by the employer. He was advised that it had to be a job-related injury to file under workers' compensation. Another worker (an estimator) in the office at the time signed a statement indicating that the claimant came in and told the owner's wife about his knee problems, and that he replied "no" when asked if it was hurt on the job. He asked about other medical care coverage and when none was available, asked to have a workers' compensation claim filed. Up to that time, according to the estimator, he had never heard the claimant indicate any problem with his knee.

Credibility was a key factor in deciding the issues in this case and it is apparent that the hearing officer gave greater weight to the evidence and testimony of the employer and his wife, the office manager, than she did to the evidence and testimony of the claimant. She concluded that the claimant was inconsistent and that he failed to prove a compensable injury by a preponderance of the evidence. It is well recognized that the

hearing officer is the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given the evidence (Section 410.165(a)) and is responsible for resolving conflicts and inconsistencies in arriving at the facts of the case. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Not only was there inconsistency in the description of the mechanism of the asserted injury, there was conflict in the evidence and testimony as to when the asserted injury occurred. The statements of the coworker and the office personnel were in opposition to the testimony offered by the claimant that he sustained and reported an on-the-job injury. The hearing officer was at liberty to believe all, part, or none of the testimony of any witness and was not bound to accept the claimant's testimony at face value. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Too, the claimant continued to work without any indication of injury for several weeks after the asserted date of injury. From our review of the evidence and record in this case, and applying our standard of review of factual sufficiency issues, we cannot conclude that the findings, conclusions, and decision of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge