

APPEAL NO. 990316

Following a contested case hearing held on December 29, 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 concluding that the appellant's (claimant) compensable injury of _____, does not extend to his right wrist, right elbow, lumbar spine, and psychological conditions with a diagnosis of right elbow and right wrist sprain/strain, lumbar discogenic syndrome, depression, anxiety, and memory loss, and that claimant did not have disability from the injury sustained on _____. Claimant has appealed these conclusions, asserting that they are against the great weight of the evidence. The respondent (self-insured and/or employer) urges in its response the sufficiency of the evidence to support them.

DECISION

Affirmed.

The parties stipulated that at all times pertinent to this case, claimant was an employee of the self-insured. Although claimant has not specifically appealed any of the hearing officer's findings of fact, we will regard as inferentially appealed by the appealed conclusions the findings that claimant did not injure his right wrist, right elbow, and lumbar spine on _____, as a result of an assault at the homeless shelter; that claimant has a history of psychological problems prior to _____, and the assault incident at the homeless shelter did not cause or aggravate his prior psychological condition; and that following the _____, assault incident, claimant continued to perform his part-time duties at the homeless shelter until late April 1997 when his employment was terminated.

Claimant has not appealed findings that he lived at the homeless shelter operated by the self-insured and also worked on a part-time basis as a customer assistance clerk at the homeless shelter; that on _____, claimant was involved in a fight with a person he was escorting out of the homeless shelter and the other person was arrested by the police and charged with aggravated assault; that claimant sought emergency medical treatment at (hospital) on _____, for a laceration to the head and to the small finger on the right hand; that claimant was evaluated by Dr. JA on March 12, 1997, for a complaint of pain in the neck and shoulder area and Dr. A provided a diagnosis of neck sprain and acromioclavicular (AC) ligament sprain; that Dr. JA referred claimant to physical therapy (PT) for his neck and shoulder problems and claimant began PT on March 17, 1997; and that on April 10, 1997, Dr. JA noted that claimant's complaints dealt with stress-related problems and did not concern physical problems with his neck or shoulder and referred him to Dr. V for continued psychiatric treatment.

Claimant testified that in December 1996, he commenced working at a shelter and resource center for the homeless operated by the self-insured where he performed receptionist duties and also some cooking. He stated that on _____, he was asked to escort a resident from the shelter, and that when he attempted to do so, the resident

assaulted him, hitting him on his left cheek with a fist, throwing a beer bottle which struck the back of his head, and scuffling with him on the floor. Claimant said he briefly lost consciousness, that the police arrested the miscreant, and that he was taken to a hospital emergency room (ER) for treatment. He said he initially was treated by Dr. JA; that he later began treatment with Dr. P and still later with Dr. AA who practiced with Dr. P; that still later he was treated by Dr. H; that still later he was treated by Dr. BA; and that before the incident, he was seeing a psychiatrist, Dr. V, for problems unrelated to the work incident. Claimant acknowledged that Dr. JA released him to return to light-duty work on March 12, 1997. He said he worked until April 28, 1997, when he went on a leave of absence and that his employment was terminated in June 1997. Claimant maintained that the assault resulted in all of the claimed injuries, notwithstanding that some were not immediately diagnosed, and that his injuries, including pain and memory loss, resulted in his inability to continue to perform his duties at the shelter.

The self-insured's project manager for the shelter, Mr. T, testified that claimant's job title was clerical aide, that claimant's duties involved being a receptionist and were light duty, and that claimant worked 19 hours per week at the shelter and lived there. He also indicated that the employer and claimant reached an understanding that claimant should stop working there on April 28, 1997, and that his employment was terminated for cause in June 1997.

The ER records reflect that claimant's one-inch scalp laceration was stapled and a laceration on his little finger sutured and that he was provided with medication and released. Dr. JA's initial medical report, dated March 12, 1997, states the diagnosis as neck sprain, rotator cuff syndrome, and AC sprain; that the examination showed mild shoulder impingement, AC joint pain, and some cervical paravertebral muscle tenderness; and that claimant can return to limited type of work. No new diagnoses were added in Dr. JA's reports of follow-up visits in March and April 1997, the AC joint diagnosis was dropped, and the April 10, 1997, report noted claimant's complaint of stress at work and stated that he would benefit by seeing Dr. V. Dr. JA's May 7, 1997, report stated that claimant still had some tenderness over the left trapezium, that claimant's complaints of lack of energy and strength appear related to his psychiatric illness, that he will send claimant for some PT to alleviate his symptoms, that claimant's prognosis is good, and that he will see claimant "back in four weeks for, hopefully, a final evaluation."

Dr. P's initial report, dated May 14, 1997, states the diagnosis as left shoulder strain/sprain with rotator cuff tendinitis-impingement syndrome, cervical and thoracic strain/sprain, right hand/wrist strain/sprain with laceration and contusions, left elbow/forearm strain/sprain, and left foot/ankle strain/sprain, somewhat resolving. In later reports of Dr. P, the elbow, forearm, ankle, and foot diagnoses were dropped.

In a September 17, 1997, report, Dr. JA stated that claimant came in for a follow-up visit; that it was unclear to him as to why claimant was there and claimant could not voice an opinion as to why he was there; that claimant said he still has some neck and shoulder pain; and that claimant has been seeing Dr. P and wants to be evaluated by Dr. H. Dr. JA

said he would order an MRI to further investigate the pain but that because of claimant's psychiatric history, it is sometimes difficult to discern where his pain is coming from. He characterized claimant's prognosis as poor. Dr. JA wrote on October 3, 1997, that following the _____, incident, claimant came in mainly complaining of neck and right shoulder pain and that at the time of his last visit, claimant still had some neck pain but his right shoulder symptoms were resolved; that in Dr. JA's opinion, claimant's psychiatric problems were not related to the injury itself; and that claimant is able to work and has always been able to do light-duty work.

Dr. H's initial medical report dated December 1, 1997, states the diagnosis as backache, neck sprain, and rotator cuff syndrome and his records reflect that he provided claimant with conservative treatment for part of 1998. Dr. BA's initial medical report dated April 30, 1998, states the diagnosis as cervical discogenic syndrome, thoracic strain, and lumbar discogenic syndrome. Dr. BA's follow-up reports through November 24, 1998, reflect that he provided claimant with conservative treatment.

The extent of claimant's _____, injury and whether he had disability (as defined in Section 401.011(16)) resulting from that injury presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, 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 evidence tending to show that claimant did not complain of any injury aside from his head and finger lacerations and his neck and right shoulder before seeing Dr. P in May 1997 and the opinions (set forth above) expressed by Dr. JA on October 3, 1997.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge