

APPEAL NO. 990388

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 27, 1999, a contested case hearing was held. With regard to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1998 unless otherwise stated), and did not have disability.

Claimant appeals, summarizing the evidence from his perspective, contending the hearing officer did not recite "the abundant evidence" produced by the claimant and asserting the hearing officer's decision is incorrect (not supported by the evidence). Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Claimant was employed as a maintenance man, floater and marble/granite installer by a marble and granite company (employer). Although claimant testified about some fumes making him dizzy at work on _____, the gist of his claim is that he slipped on some sludge and fell backward on his "elbow and [his] buttocks." Claimant said that he felt "a sharp pain in my arm and my buttocks." Claimant reported his injury, finished his immediate task and went to a hospital emergency room (ER). Claimant testified that about five minutes after his fall, his hands began to get numb. Claimant listed "J and A" as witnesses on his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41). No J or A testified or submitted a statement.

The ER report of _____ has a history of "slipped/fell on [left] side." The clinical impression was "(1) Fall (2) Trapezeus muscle strain (3) [left] ulnar nerve contusion." X-rays were negative. There was "[n]o swelling & ecchymosis. Able to move arm well." Claimant was prescribed medication and advised to see a specialist. Claimant said that he sought care from a specialist but treatment was denied by the carrier. Claimant testified that although he was in pain, he had no further medical care because the carrier had denied liability. Claimant again sought treatment in the ER on October 22nd for neck pain. Claimant was prescribed medication but left without signing the discharge forms.

Claimant acknowledges, and carrier emphasizes, that claimant had a prior workers' compensation injury in 1994 to the same general area of the body. A 1994 medical report gives a history of:

The patient fell landing on his buttocks and left hand after stepping on some clear gel used for freezing and packing at work. He sustained an injury to his neck and low back, contusion and numbness of the left hand and chest pain.

Carrier also presented testimony that claimant had been reprimanded earlier in the morning on _____ for tardiness and failing to complete his job duties, that claimant was upset that he was assigned field duties (claimant denied this allegation, testifying that he liked field duty because it kept him busy and paid more), and that claimant was overheard saying, "I'll show these guys." Mr. JP, employer's owner, also testified that a coworker had told him earlier on _____ that claimant was going to fake an injury. (The hearing officer remarked that was hearsay on hearsay.) Carrier presented the testimony of three witnesses and had transcribed statements of three witnesses. One of the transcribed statements was from Mr. EA, one of claimant's coworkers, who said that he saw claimant fake his fall. Specifically, what the statement said was:

He saw [claimant] down in the where he clean the cleaning area, he was smoking a cigarette and what he saw that he know was [claimant] felt like fake a fall, break his leg and that was it. He was cleaning, smoking cigarette and basic fake a fall.

The hearing officer, in his discussion, commented:

Carrier asserts that Claimant faked a fall to retaliate against Employer because he was angry after a reprimand. Carrier offered witness testimony which is convincing that Claimant staged an incident. The evidence preponderates that no damage or harm occurred to Claimant's body and that he used symptomatology from his prior injury to bolster this fabricated claim. Because there was no compensable injury, there is no disability.

While claimant acknowledges that the hearing officer is the sole judge of the weight and credibility of the evidence, he asserts the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer's statement of the evidence "does not reflect the abundant evidence . . . that he sustained a compensable injury" We disagree. The hearing officer did, very briefly, summarize claimant's testimony and visits to the ER. The hearing officer is not required to spell out every detail of the evidence presented, and Section 410.168 only requires a written decision that includes findings of fact and conclusions of law. The evidence presented in this case was in conflict and different inferences could be drawn from the evidence presented. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to 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 Co. of Newark, New Jersey, 508 S.W.2d 701 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer obviously assigned greater credibility to the employer's witnesses than to claimant's testimony, as he was privileged to do. The hearing officer simply resolved the conflict and inconsistencies in the evidence against claimant.

In that we are affirming the hearing officer's decision that claimant had not sustained a compensable injury, claimant cannot, by definition in Section 401.001(16), have disability.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge