APPEAL NO. 990620

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 17, 1999. One hearing was held to determine whether the appellant (claimant) was injured in the course and scope of his employment on (date of injury no. 1), and (date of injury no. 2); whether the respondent (carrier) is relieved of liability for those claimed injuries because the claimant did not timely report them to the employer; and whether the claimant had disability resulting from the claimed injuries. The hearing officer determined that the claimant has a hernia and disc protrusions at L3-4 and L4-5. But she decided each of the six issues before her against the claimant. The claimant appealed, urging that the evidence is not sufficient to support the decision of the hearing officer and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained compensable injuries and has disability beginning on July 10, 1998, as the result of those injuries. The carrier responded, contending that the claimant did not timely file an appeal, urging that the evidence is sufficient to support the decision of the hearing officer, and requesting that it be affirmed.

DECISION

We affirm.

We first address the contention of the carrier that the claimant did not timely file an appeal. The carrier contended that the last day for the claimant to file an appeal was March 22, 1999, and pointed out that the claimant transmitted a copy of the appeal to the Texas Workers' Compensation Commission (Commission) by facsimile after business hours on that day. The appeals file also contains an envelope in which a copy of the appeal was received by the Commission. The envelope is postmarked March 22, 1999, and is stamped as being received by the Commission on March 24, 1999. Even assuming that March 22, 1999, was the last day for the claimant to file an appeal rather than March 23, 1999; the claimant timely filed his appeal.

The Decision and Order of the hearing officer contains a detailed statement of the evidence. Briefly, the claimant contends that he sustained a hernia on (date of injury no. 1), when he lifted a table, and a back injury on (date of injury no. 2), when he caught a box; that he timely reported the injuries to persons in supervisory positions on the days the injuries occurred; that he aggravated both injuries on July 10, 1998; and that he has not been able to work since July 15, 1998. The carrier contended that the claimant was not injured as he claimed; that there were conflicts in his responses to questions by an adjuster and in his testimony at the hearing; that he did not seek medical care until July 1998; that he did not report the claimed injury of (date of injury no. 1) until July 1998; that when he was told it was too late to report an injury, he said the injury occurred two weeks ago; that the person he timely reported the claimed (date of injury no. 2) injury to was not in a supervisory position; and that since he did not sustain compensable injuries, he cannot have disability.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). In her Decision and Order, the hearing officer stated that the claimant's testimony and previous statements he had made were extremely conflicting and were controverted by other evidence and gave examples of the conflicts and controversions. In his appeal, the claimant specifically contends that the person to whom he reported the claimed (date of injury no. 2) injury was in a supervisory position. The general manager testified that that person was his administrative assistant. In her discussion in the Decision and Order, the hearing officer uses "supervisor" and "supervisor for the claimant." Section 409.001(b) provides that the notice of an injury may be given to the employer or to an employee of the employer who holds a supervisory or management position. While the statements of the hearing officer may cause some confusion, there is no evidence that the person to whom the claimant gave notice of the (date of injury no. 2) injury was in a supervisory or management position. The hearing officer's determinations that the claimant was not injured in the course and scope of his employment on (date of injury no. 1) or (date of injury no. 2); that he did not timely report the claimed injuries to the employer; and that because the claimant did not sustain a compensable injury on (date of injury no. 1) or (date of injury no. 2), he did not have disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge