APPEAL NO. 990685

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 1, 1999, a hearing was held. She (hearing officer) determined that appellant (carrier) is liable for a _____, compensable injury to respondent (claimant) because the injury was not caused by claimant's unlawful attempt to injure another person and did not result from a third person because of a personal reason (*see* Section 406.032(1)(B) and (C)); the hearing officer also found disability from November 4, 1998, through the date of the hearing. Carrier asserts that the credible evidence shows that claimant was the aggressor and the coworker was trying to defend himself, citing claimant's lack of credibility as shown by his "falsifying his time sheets" and inability to remember his criminal record. Carrier also states that the hearing officer did not make underlying findings of fact and states that disability must be based on a compensable injury, adding that the medical evidence is "conclusory" and does not rise to the proper level. The appeals file does not contain a reply by claimant.

DECISION

We affirm.

The issues in this case provided questions of fact for the hearing officer to determine.

Claimant worked for (employer), on _____. All the evidence indicated that claimant, a truck driver, was talking with a third person, apparently GD, about a time card from the previous week when another employee, JJL, commented about the hours claimant had worked.

Claimant testified that he told JJL to "mind his own business." (Claimant's statement of November 18, 1998, said that a supervisor also told JJL, basically, to mind his own business, but JJL "came back" (still disputed claimant's time), and claimant said, "I did curse him.") Both claimant's testimony and his statement referred to claimant asking JJL how he could keep up with his (claimant's) time when he could not keep up with his own, and both his testimony and his statement said that onlookers laughed at that. Claimant stated he then walked off and the next thing he knew he was picking himself up off the ground. Claimant said he hurt his right shoulder when he collapsed to the ground from being hit with a wrench, but he got up (after collapsing once more when he tried to put weight on his right arm) and tried to go after JJL, but was held back. Claimant said he did not show a knife on that day and was walking away when he was hit on the back of the head, on the left side below (or behind) the ear. Claimant on cross-examination said he had no criminal record. He then responded "maybe" to a question about a conviction involving a check. After having a 1979 theft by check conviction called to his attention, he said he "can't remember what happened two years ago." We note that at the time of the hearing four months had passed since the date of injury.

JJL testified that he and claimant had words on _____, about claimant's time. He said that he walked off though, that claimant went to his truck and came back with his right hand in his pocket, that he was shaking his other hand at him, and that claimant "made a run for me and I slapped him beside the head with a wrench." JJL also said, "he said, gimme that wrench and I gave it to him." He, too, said that other employees held both of them back from each other. On cross-examination JJL said that he hit claimant when "he made a motion that he was going to hit me." In a prior statement JJL also said that claimant, after a certain amount of discussion that day about claimant's time at work, went to his truck and came back with his hand in his pocket, and "when I seen him coming back I picked up this wrench and, uh, when he came back he lunged at me and I hit him up the side of the head with the wrench . . . ."

JB testified that he is an owner of employer. He said that two other employees said that claimant lunged at JJL and that claimant started it, but he also said he was surprised "when this happened."

Carrier points to a statement by ZW (possibly claimant's cousin) as failing to agree with claimant's claim that ZW grabbed JJL's arm and deflected the "initial" blow. ZW did not testify, but his statement provided the following concerning his part in the altercation:

> I seen [JJL] run, run around beside me, you know, and by the time I got to him, you know, to grab him, you know, you know, kind of subdue him, you know, everything with [JJL] (inaudible) about gone as far as, you know, (inaudible) prior to hitting (inaudible).

Claimant's testimony did not address ZW deflecting JJL's blow, at least insofar as such was audible through the tapes that recorded this hearing, but claimant's statement does say, after he again stated that he was hit from behind, "Yeah, uh, I was told, though, that my cousin had grabbed, grabbed, uh, was stopped his flow of momentum and, uh, uh, he said if that guy had of hit you with all his force, you know, he was swinging so hard that my cousin didn't quite catch his arm and he followed through with the swing . . . ." (Emphasis added.)

Claimant clearly stated that the blow struck was to the back of his head, but he also said it was on the left side below or behind the ear. Carrier's argument was that claimant was lunging at JJL and JJL hit him on the side of the head from the front as claimant came at JJL. However, JJL was never asked whether he was right or left handed, and he was never asked how he swung the wrench; no one was asked in which hand JJL had the wrench; answers to these questions may not have been determinative but they may have provided added insight concerning whether the blow was from the front or rear since the evidence indicated the blow was struck to the left side at the back of the head.

GD testified, when asked where claimant was hit, "Uh, it was, I saw two scratches back of the back of his head." He also said that claimant's assertion about his time from the past week was "wrong," after claimant had insisted that it was correct.

Claimant sought medical care from Dr. B on _____, the same day he was hit. The history recorded was of an assault with a wrench "when my back was turned" on the job, with a shoulder injury, suspected to be a fracture. Dr. B took him off work that day. In a letter dated January 7, 1999, Dr. B said that when claimant presented on _____, he had "a large hematoma involving the occipital scalp" (the back of the head). The right upper extremity was immobilized. Dr. B said that claimant has continued to be disabled and added that more studies were needed to determine future treatment.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. When faced with conflicting accounts, the hearing officer as fact finder resolves those conflicts. While the carrier states that claimant was not credible, citing his failure to admit to a prior conviction, his wrong time card, and his reference to someone having interceded and thereby deflecting the blow he absorbed, the hearing officer determines credibility. In choosing to believe claimant's account as opposed to JJL's, the hearing officer could give some weight to GD's statement in which he said that claimant's "scratches" were on the back of the head and Dr. B's statement that the hematoma was on the back of the head. These observations could be reasonably interpreted to lend credence to claimant's account that he was struck from behind. While JB alluded to two employees that said claimant was coming toward JJL, no statements from the two employees were provided that said that. The hearing officer could also note that claimant indicated that after he was struck, he got up and did attempt to get to JJL, but was restrained. While carrier states that claimant's account of intervention was not corroborated by ZW, claimant's account states that he was told of such intervention; upon hearing the testimony and reading the statements, the hearing officer could reasonably question the clarity of the story claimant heard which led him to refer to the intervention.

Carrier states that no underlying findings of fact were made. It cites Texas Workers' Compensation Commission Appeal No. 970876, decided June 27, 1997. That case dealt with supplemental income benefits. It did say that conclusions of law should be based on findings of fact and findings of fact should be based on the evidence. It also said that findings of fact may be implied from a finding of fact that is essentially a conclusion of law and that findings of fact may be inferred from the evidence. *Also see* Texas Workers' Compensation Commission Appeal No. 92169, decided June 17, 1992, and Texas Workers' Compensation Commission Appeal No. 93147, decided April 12, 1993, which said that the Administrative Procedures and Texas Register Act did not apply to findings of fact and conclusions of law in regard to dispute resolution under the 1989 Act and the 1989 Act did "not impose stringent standards" on findings of fact. We agree with Appeal No. 970876, *supra*, that basic findings of fact would be very helpful and in instances in which the case is litigated on a particular point, a finding of fact should address that point. We do not find that the case under review must be remanded for additional findings of fact. In addition, Texas Workers' Compensation Commission Appeal No. 960672, decided May 16, 1996, was cited. That case overturned a determination of disability when there was no medical evidence that the involved claimant should be off work and the claimant merely testified about pain without relating it to his injury and indicated no limiting factors. The case asserted that in such an instance a hearing officer's reference to a claimant being "credible" would not substitute for the lack of evidence. Appeal No. 960672 does not control the facts

and decisions reached in the case under review. The evidence sufficiently supports the determination that claimant was hit on the back of the head; this finding of fact, a comment in the Statement of Evidence that claimant was not the aggressor, and the evidence of record also supports an implied finding of fact that claimant was walking away from JJL when struck.

The determination that disability existed from November 4, 1998, through the date of the hearing is sufficiently supported by Dr. B's records which took claimant off work on _____, and his subsequent letter in January 1999 in which he said that claimant was still off work and should continue to be so until studies were performed which showed what treatment needed to be provided. While these statements could be considered to be conclusory, they could be interpreted to be nonconclusory. Regardless of how they are described, the weight to give Dr. B's records and statement was for the hearing officer to decide. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge