

APPEAL NO. 991148

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 April 21, 1999. The issues at the CCH were whether the appellant (claimant) suffered an injury to his right knee in the course and scope of his employment; whether the respondent (carrier) is relieved from liability because of the claimant's failure to timely notify his employer; whether the claimant had disability; what is the date of injury; and whether the compensable injury extends to and includes an injury to the claimant's back, cervical spine, dizziness and a closed head injury. The hearing officer determined that the claimant suffered an injury to his right knee in the course and scope of his employment on _____; that the carrier is not relieved of liability due to the claimant's failure to timely report the injury, since the injury was reported on _____; that the claimant has not suffered disability; and that the compensable injury does not extend to an injury of the cervical spine, back, dizziness or a closed head injury. The claimant appeals, urging the hearing officer's determinations on the issues of extent of injury and disability are against the great weight and preponderance of the evidence and should be reversed. The carrier responds that the decision is supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that while at work delivering merchandise on _____, he slipped and fell while walking into a large walk-in cooler. The claimant testified that he fell backwards, struck his right knee against the wall of the cooler, and did not remember hitting any other parts of his body. According to the claimant, he sought medical treatment with Dr. P for his right knee on October 27, 1998, and was told that it was bruised. The claimant continued working and testified that around Thanksgiving, his lower back and neck started hurting him. The claimant testified that he sought medical treatment with Dr. K, a chiropractor, on December 16, 1998, and was taken off work.

The medical record of Dr. K dated April 16, 1999, indicates that the claimant "presented himself with dizziness and headaches which he had been experiencing for approximately two months." The medical records of Dr. S indicate that the claimant was complaining of dizziness on September 4, 1998, and the claimant testified that he had sinus surgery performed on February 19, 1999. An MRI of the cervical and lumbar spine were negative for disc herniation or other pathology.

The carrier, on cross-examination, emphasized the claimant's prior recorded statement taken on February 2, 1999. In that recorded statement, the claimant stated that his back was not hurting when he went to the chiropractor but, after the chiropractor did an adjustment, his back started hurting. The claimant's wife testified that the claimant had been complaining about back pain not long before Thanksgiving Day.

The claimant had the burden to prove that he sustained an injury on _____, and had disability. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of 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.

The hearing officer determined that the claimant sustained an injury to his right knee on _____, did not sustain an injury to his cervical spine, back, dizziness or a closed head injury, and did not have disability. Whether the claimant sustained an injury and to what parts of the body was a question of fact for the hearing officer to decide. There were inconsistencies in the testimony of the claimant as to when his back and neck began to hurt. The claimant did not seek treatment for anything other than a knee injury related to the fall on _____, until December 16, 1998. The claimant's dizziness preexisted _____, and the claimant's attorney stated in closing argument that the claimant had not proved a relationship between the injury and a closed head injury or dizziness. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We find there was sufficient evidence to support the determination of the hearing officer that the claimant suffered an injury to his right knee in the course and scope of his employment on _____, and that the compensable injury does not extend to an injury of the cervical spine, back, dizziness or a closed head injury.

The claimant appealed the hearing officer's finding of no disability. The claimant did not assert disability based on the right knee injury, but asserted disability beginning December 16, 1998, through the date of the CCH, due to his alleged back and neck injury. Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant's injury was only to his right knee, the claimant had to establish that his inability to obtain and retain employment at the preinjury wage was due to his right knee injury. The claimant was released to full duty without restrictions by Dr. P on November 5, 1998, for his right knee injury. The claimant testified that as of that date, his right knee injury had resolved to its preinjury condition. We find the evidence sufficient to support the determination of the hearing officer that the claimant has not suffered disability.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge