

APPEAL NO. 991260

Following a contested case hearing held on May 17, 1999, 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 determining that the appellant (claimant) sustained a compensable left foot injury on \_\_\_\_\_; that the injury did not extend to and include his lumbar region or abdominal, neurological, vascular, or pulmonary systems; that he did not have disability from July 11, 1998, to the date of the hearing as a result of the injury to his left foot; and that the respondent (carrier) is not relieved of liability for the left foot injury since claimant was not in a state of intoxication at the time he injured his left foot.

Claimant has appealed the extent-of-injury and disability determinations on evidentiary sufficiency grounds. The carrier urges in response that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Affirmed.

It is undisputed that on \_\_\_\_\_, claimant sustained an injury to his left foot in the course and scope of employment and was unable to finish his shift. Claimant testified that on \_\_\_\_\_, his first day of work as a day laborer at a landfill, his left foot, encased in both his sneakers and the employer's rubber boots, stepped on a needle in the trash and he felt it prick his foot; that he lifted his left leg to extract the needle and fell backwards; that his left foot and back were injured at that time; that the needle had some tubing attached which had some green substance in it; and that he became dizzy and sick. He said he immediately reported the incident to his supervisor and completed an accident report which he conceded only mentioned a left foot injury. Claimant further testified that he was taken to Dr. S; that Dr. S examined him, treated his left foot with ointment and a band-aid, and drew a specimen of his blood for testing for AIDS, hepatitis, and other diseases; and that he did not return to Dr. S to discuss the blood test results because he contacted an attorney who referred him to his own doctor, Dr. R. He stated that he got dizzy and had blurred vision from the foreign substance in the needle and that the substance "is slowly killing [him] as time goes on." Claimant further stated that when he saw Dr. R on July 20, 1998, Dr. R took him off work and that he has not since worked. He said that he saw Dr. R only twice because the carrier denied his claim and refused to pay Dr. R and he indicated that he then "got into a fight" with the carrier over this action and that the fight "landed [him] in jail," apparently for making terroristic threats. Claimant testified that he was incarcerated from August 20 to December 10, 1998, and from January 18 to April 11, 1999.

Dr. S's records of \_\_\_\_\_, reflect that his examination revealed "a very superficial puncture mark" on the ball of the left foot; that his diagnosis was a minor puncture wound which he treated with neosporin ointment and a band-aid; that he administered a Tetanus shot, obtained blood for HIV, hepatitis, and blood-borne pathogen testing, and took claimant off work for the rest of the July 10th shift with instructions to keep the wound clean and dry; and that he told claimant to call in for the results and to return on August 10, 1998,

for a second HIV test. Dr. S's notes of July 14, 1998, reflect that claimant complained of diarrhea and perceived swelling of the left foot and leg; that claimant was very concerned about possible HIV and hepatitis exposure which Dr. S discussed at length; and that the examination revealed a superficial puncture wound which had healed with no infection, no drainage, and no edema. Lab test results of July 14, 1998, were negative for hepatitis and HIV but positive for the marijuana metabolite.

Dr. R's July 20, 1998, record reflects complaints of lumbosacral region pain, pain in the left foot, and bloody stools, all starting after the July 10th needle injury. Dr. R diagnosed lower lumbosacral strain, possible hemorrhoids, and left foot pain and swelling, and he took claimant off work until further notice. A July 16, 1998, record from the JBI Health Center (health center), to which claimant said he was referred by Dr. R, stated that claimant is complaining of abdominal cramps, diarrhea, and blood in the stool, and that he "noticed [these symptoms] on 5-12-98." Claimant denied stating that he had those symptoms prior to \_\_\_\_\_.

The carrier introduced records which reflected that claimant had been convicted of a felony and also a misdemeanor (terrorist threat).

Claimant had the burden of proving by a preponderance of the evidence that his compensable left foot injury extended to his back (lumbar region) and abdomen and to his neurological, vascular, and pulmonary systems, and that he had disability (Section 401.011(16)) as a result of a compensable injury from \_\_\_\_\_, to the date of the hearing, as he claimed.

The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, in cases such as this, where the matter of the causation of the claimed injury is beyond the general knowledge of the public, expert evidence is required (Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.)) and the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer (Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.)). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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 decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge