

APPEAL NO. 991262

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 May 18, 1999. She (hearing officer) determined that the appellant (claimant) did not sustain an injury to his back, neck, or legs on the course and scope of his employment on _____; that the claimant engaged in a fight with Mr. F while at work on _____; that the fight was initiated by the claimant with the intent to injure Mr. F; that the claimant did not sustain a compensable injury on _____; that the claimant was not unable to obtain and retain employment at wages equivalent to his wage of _____, from February 4, 1999, to the date of the hearing on May 18, 1999; and that the claimant did not have disability from February 4, 1999, through May 18, 1999. The claimant appealed, contended that the determinations are wrong because of fraudulent testimony and discrimination, and requested that the decision of the hearing officer be reversed. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that on _____, he and Mr. F were carrying pipes that are 16 feet long; that he was at one end of a pipe and Mr. F was at the other end; that he slipped on water and oil on the floor; that he hit his back on a rail; that he picked the pipe up and dropped it again because his back hurt and his legs would not work; that he leaned against the rail because his back hurt; that he did not see Mr. F come toward him, but that he saw Mr. F close to him; that Mr. F hit him; that he hit Mr. F, knocking him back about four feet; that Mr. F come toward him and that he hit Mr. F to keep him from hitting him; and that other workers about 16 feet away said that they did not see or hear what happened, but that others about 30 feet away made statements saying that they saw what happened. Medical records indicate that the claimant was diagnosed with cervical, dorsal, and lumbar sprain and the report of a cervical MRI indicates minor degenerative disease changes.

Mr. F signed a written statement made on _____, and was questioned by an adjuster on February 10, 1999. Mr. F said that he did not see the claimant slip, that three times he told the claimant to stop throwing pipe, and that the claimant hit him four times. In statements dated _____, Mr. CS and Mr. W stated that they saw the claimant hit Mr. F and did not see Mr. F hit the claimant. Mr. RS and Ms. G signed written statements dated February 4 and 5, 1999, indicating that the claimant came into the employer's office using a cane and was later seen outside the office walking without the cane and not acting like he was hurt.

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. 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 judgement 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). At the hearing, the claimant argued that statements were fraudulent and the result of discrimination. The hearing officer did not agree with the claimant. Other than the testimony of the claimant the record does not indicate that the statements in evidence are fraudulent, that they were made as the result of discrimination, or that the claimant was discriminated against. The hearing officer resolves conflicts and inconsistencies in the evidence. The appealed determinations of the hearing officer are not 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, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge