APPEAL NO. 991420

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 3, 1999, a hearing was held. He (hearing officer) determined that appellant (claimant) did not sustain a compensable injury, although he fell down some stairs at work. He also found that claimant sustained no disability. Claimant asserted that the hearing officer found that an accident occurred, but his determination that no injury occurred is against the great weight of the evidence; inconsistencies cited by the hearing officer are said not to be inconsistencies or are not relevant. Respondent (carrier) replied that the appeal was not timely but, if found to be timely, the determination should be affirmed.

DECISION

We affirm.

The decision of the hearing officer was distributed to the parties on June 17, 1999. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that correspondence from the Texas Workers' Compensation Commission (Commission) is deemed to be received five days after mailing. Five days after June 17th is Tuesday, June 22nd. Claimant then had 15 days to appeal, which ended on Wednesday, July 7, 1999. Claimant's appeal was filed with the Commission on July 7, 1999, and was timely.

Claimant worked for (employer) as a chicken deboner, by cutting the chickens with scissors, on an "assembly" line. He testified that on _____, he slipped on some steps descending from a catwalk and described bouncing down eight steps to the floor and landing on his buttocks. He said that the soles of his shoes could have been slippery from chicken products. There is no issue of notice. Claimant and Mr. C, a supervisor, both testified that claimant reported the fall that same day.

Mr. C testified further that claimant reported the fall and said he was "fine" but "might hurt tomorrow," which Mr. C said did not sound right to him, adding that claimant appeared to be in no pain. Mr. C described that he and claimant had had words; he added that claimant had been a competent employee, but said claimant had gotten "testy" since the beginning of the year. Once, he said, when claimant needed help, he cursed. Mr. C said that he had talked to claimant about his performance but had not "written him up." He also stated that he counted the steps claimant fell on and they total five steps.

Claimant did not work the day after the fall (day after date of injury) and did not see a doctor until (six days after date of injury), which both parties agreed was one day after claimant was fired. There was also some evidence that claimant was told on (day after date of injury), that he needed to be tested for intoxicants but refused to come in for testing

on that day. On February 5, 1999, when claimant arrived at work, he stated that he received "bio-freeze" to his back in the nurse's station and then was tested for alcohol with a finding of .011. He worked four hours that day, testifying that he could work no more. He did not work on the weekend, February 6th and 7th, but when he arrived on (date claimant was fired) (testifying that he did not intend to work that day but came in to get more nursing treatment and get the name of a doctor to see), he was tested again for alcohol with a finding of .05. All parties agreed that claimant was fired that day.

While claimant said that he had not been in any confrontation, Mr. C said that he and claimant had "words" on (date claimant was fired). Mr. C said he stated at that time that claimant said he was not hurt on _____, when he reported the fall, at which time, he further testified, claimant replied that Mr. C was trying to "screw me out of some money" and called Mr. C a liar.

On (six days after date of injury), claimant saw Mr. B, a physician's assistant, and received medication from Dr. S. There is no history provided indicating a work-related accident, but claimant was provided restrictions related to bending and lifting no more than 20 pounds for one week with a reference made to "musculoskeletal LBP." Claimant then began seeing Dr. L, D.C., on February 12, 1999. Dr. L did note a history of claimant having fallen down steps at work on _____. He diagnosed lumbar sprain/strain, sacrum sprain/strain, lumbar facet syndrome, and muscle spasm. Claimant stated that Dr. L has taken him off work.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He determined that, although claimant did fall on some steps at work, he sustained no injury at that time. *See* Texas Workers' Compensation Commission Appeal No. 92276, decided August 5, 1992, which stated that just because a fall at work occurred the hearing officer did not have to conclude that an injury had been sustained.

In this case, while claimant testified to receiving some treatment by a nurse at the work site, records from the initial visit to Dr. S do not show a history of a work injury. In addition, although there was no question that claimant reported his fall the day of the accident, the evidence showed that claimant did not see a doctor until six days later on (six days after date of injury), the day after he had been fired. Even if the hearing officer believed Dr. L's diagnosis of February 12, 1999, which included lumbar strain and sprain, he did not have to conclude that such diagnosis reflected injury from the _____, fall. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). While inconsistencies in claimant's testimony, such as the number of steps (eight as opposed to Mr. C's count of five), do not appear to be of the type that would always result in the same inference being made by a fact finder, we cannot say that the hearing officer could not accord some weight to them. Just because another fact finder may not so infer and may reach another conclusion from the same evidence, is not a basis for reversal of factual determinations. We do not find that the decision is against the

great weight and preponderance of the evidence. With no compensable injury, there can be no disability. *See* Section 401.011(16).

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:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge