

APPEAL NO. 991428

Following a contested case hearing held on May 27, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not include or extend to his cervical spine. Claimant has appealed, arguing the evidence he believes should have resulted in a favorable determination. The respondent (carrier) urges the sufficiency of the evidence to support the challenged findings and conclusions.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, claimant sustained a compensable right ankle injury while in the course and scope of his employment with (employer).

Claimant testified through a Spanish-language translator that while wrapping a pallet of food in the employer's food warehouse on \_\_\_\_\_, he was struck in the chest and shoulder by a cart loaded with food and fell down onto his back, injuring both his right "leg" and his "back"; that he did not see the cart which was being pulled by a "tugger" driven by Mr. G; that he told Mr. G and two other coworkers in the vicinity, Mr. RR and Mr. JR, that his leg and back hurt; and that when Mr. A, the supervisor, came to the scene shortly thereafter, he told him he had been struck in the chest and shoulder and ankle. He further stated that although he had pain in his leg and back, he continued to work but went to a (clinic) the next day; that he told the doctor at the clinic that he had been hit in the chest but more attention was paid to his ankle; that he was released to light duty and later to full duty; that after being released to work full duty, he worked until December 8, 1998, when he was seen by Dr. C, a chiropractor to whom he was referred by his attorney; and that Dr. C prescribed physical therapy and gave him a lifting restriction of 35 pounds.

Mr. G testified that after driving the cart past claimant, who was wrapping a pallet, he heard shouting, looked back, and saw claimant on his knees in a kneeling position; that he went to get his boss; and that claimant told them "everything was fine" and continued to work.

Mr. A testified that when he got to claimant about two minutes after the accident, claimant was seated and told him his right foot was sore; that claimant declined an offer to go to a hospital and continued to work; and that when he asked claimant at the end of the shift if he wanted to see a doctor, claimant said that he did, so he prepared the paperwork for claimant to go to the clinic. Mr. A further testified that when claimant called him on December 6th about a return visit to the doctor at the clinic, he said his ankle was still sore but never mentioned any other body part. He also stated that he investigated the accident and interviewed the coworkers near the scene and that no one stated that claimant had fallen on his back.

The clinic record of November 23, 1998, reflects that the diagnosis was right ankle sprain and that the treatment plan included physical therapy for the ankle and light duty. The clinic record of claimant's follow-up visit on November 25, 1998, reflects the same diagnosis and that physical therapy was discontinued and claimant was released for trial of regular activities. The clinic's record of claimant's follow-up visit on December 7, 1998, reflects that claimant reported pain in the right ankle radiating to right upper leg and hip, that the diagnosis continued to be right ankle sprain, and that his medication was refilled and he was encouraged to continue with regular duty.

Dr. C's Initial Medical Report (TWCC-61) dated December 8, 1998, states the diagnoses as ankle sprain, contusion to chest, shoulder sprain/strain, cervical segmental dysfunction, and thoracic segmental dysfunction. In his narrative report of the same date, Dr. C states the history of claimant's being struck by a cart on the left chest and shoulder and twisting his right ankle, and that claimant could continue to work with modified duties. Dr. C's report of February 8, 1999, states that claimant has had eight weeks of therapy and is to receive more and undergo an orthopedic evaluation.

Reports of January 11, 1999, MRI exams state the impressions of a small bulging disc at C3-4 and C4-5 without significant spinal canal or neural foraminal stenosis and unremarkable images of the right ankle and left shoulder.

Dr. F reported on March 17, 1999, that he examined claimant; that he felt that claimant "sustained, at most, if any, an unverifiable, nonspecific soft tissue injury which, in reasonable medical probability will have inexorably resolved within 30 days"; that the electrodiagnostic testing suggesting "abnormal" findings is not credible; that "the chiropractic attentions have been unreasonable, unnecessary, and inappropriate after 30 days . . ."; that "the attentions generated have been unreasonable, unnecessary and excessive"; and that the "secondary factors" are "obvious and speak for themselves."

Claimant was asked why his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which he signed on December 7, 1998, stated the nature of injury as "[h]urt right foot, right leg, left shoulder, chest and body in general" but failed to mention either his neck or his back. He responded that the form was completed by someone in his attorney's office and that his "back" should have been included.

Claimant had the burden to prove by a preponderance of the evidence that he sustained the claimed cervical spine injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel has stated that in workers' compensation cases, the disputed issue of injury can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, 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 indicated in her discussion that she was persuaded by the fact that there was no mention of a neck injury in the clinic records and in claimant's TWCC-41 and that a neck injury was first mentioned in Dr. C's December 8, 1998, report. 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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Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge