

APPEAL NO. 991441

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 June 3, 1999. The issues at the CCH were whether the respondent (claimant) suffered a compensable right knee injury on \_\_\_\_\_, and did he have disability. The hearing officer determined that the claimant did sustain a compensable knee injury and had disability from April 21, 1998, to the date of the hearing. The appellant (carrier) appeals, urging that the determination is against the overwhelming weight of the evidence and clearly wrong and manifestly unjust. No response has been filed by the claimant.

DECISION

Not concluding the decision is so against the overwhelming weight of the evidence, we affirm.

The claimant, a rigger, testified that he sustained an injury on \_\_\_\_\_, at about 8:50 a.m. when he twisted around and his foot got hung up in a ladder and that he fell hitting his knee on the ladder. This was apparently unwitnessed. The claimant continued working but at break time, he states, he told his operator, JR, that he hurt his knee on the ladder. He states that his knee was swelling and became very painful and that around noon he told his foreman that he wanted to go home. He acknowledged that he told the foreman and the safety man, JJ, that he hurt his knee over the weekend in a fight, apparently with his wife. In any event, the claimant went home the afternoon of \_\_\_\_\_ and the next day went to an emergency room where they took x-rays; gave him medication, a brace, and crutches; and made an appointment for April 23rd with Dr. C. Medical notes of Dr. C dated April 23, 1998, provide that "[h]e twisted his right knee on (prior date of injury)." Ultimately, the claimant was diagnosed with a meniscal tear and ligament rupture and he has undergone four surgeries related to his knee. He testified that he has not been able to go back to work as he has not been released to work, and that his doctor informed him that he likely could not do any labor until he has a knee replacement. Medical notes for Dr. C dated August 6, 1998, state that "[o]n talking to the patient, he had the injury on \_\_\_\_\_, not the 18th as dictated or typed on our chart." Dr. C subsequently wrote letters which refer to the injury date as \_\_\_\_\_, and opined that with the injury he sustained he would not have been able to ambulate or come back and work or to climb a ladder on \_\_\_\_\_.

In evidence is a statement from JJ wherein he states that early in the morning on \_\_\_\_\_, and before work, he observed the claimant walking and that he had a very distinctive limp. He said that at a safety meeting that morning he noticed scratches and abrasions on the claimant's face. When JJ asked the claimant about this, the claimant told him that he got in a fight over the weekend. He did not want a medic when asked. JJ further stated that the claimant came to him about noon and wanted to leave early for personal reasons, indicating he was hurting due to the fight over the weekend. The claimant never mentioned anything about an injury at work. JJ talked to the claimant on the phone on April 30, 1998, when the claimant asked about workers' compensation and

wanted the injury to be classified as work related. A short statement in evidence by JR dated April 30, 1998, provides that on the morning of \_\_\_\_\_, when he and the claimant were given job tasks, the claimant told him "that his knee was sore and that he may not be able to get up and down the ladder." In a second statement of the same date, JR stated that when they started to work that morning, he noticed that claimant was walking with a slight limp and that it seemed to get worse as they started to work. Around noon, the claimant told him he may have twisted his knee but he did not tell JR how or when. At some undetermined time, the claimant wrote out another statement, undated, but signed by JR, wherein JR indicates that he did not observe anything physically wrong with the claimant until he climbed a scaffold ladder at approximately 10 minutes to 9:00 a.m., and that then his knee started swelling and, by lunch, he could not walk and went home.

The claimant testified that the reason that he initially stated that he was injured in a fight over the weekend was because he did not want to jeopardize a safety bonus for everyone and, also, because he initially thought his injury was not serious and would heal by itself. However, he also stated that the safety bonus would not be jeopardized if someone was sick and took a sick day. He stated he used his group health insurance for his initial medical treatment. He also acknowledged that he signed a safety statement dated \_\_\_\_\_, which indicated that no one was injured that day but that he had signed it in the morning and before the accident.

Although there was much inconsistency and conflict in the evidence regarding the sustaining of a compensable injury on \_\_\_\_\_, the hearing officer nonetheless determined that the claimant was "very credible" and found that he sustained a right knee injury on \_\_\_\_\_, and suffered disability from April 21, 1998, to the date of the CCH. While other inferences find support in the evidence, this is not a sound basis for reversing or setting aside a factual finding of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994; Section 410.165(a). A claimant's testimony only raises an issue of fact and may be believed over other evidence contrary thereto. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ); Texas Employers' Insurance Association v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston [1st Dist.] 1980, writ ref'd n.r.e.). Only were we to conclude,

which we are not able to do here, from our review of the evidence of record that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis for reversal. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order are affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

DISSENTING OPINION:

I understand the Appeals Panel standard for review of factual questions but cannot concur with a decision in which a hearing officer finds a claimant to be “very credible” who had not only said the injury occurred in a fight (and that his wife scratched his face) but was seen to have scratches on his face the day of the “compensable injury.”

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Joe Sebesta  
Appeals Judge