APPEAL NO. 991507

This case returns following our decision in Texas Workers' Compensation Commission Appeal No. 990553, decided April 29, 1999, in which we remanded for further consideration and findings of fact. On June 18, 1999, the hearing officer, held a remand hearing and issued a decision which included additional findings of fact and conclusions of law and which determined, as did his original decision, that the appellant (claimant) did not sustain a compensable injury and did not have disability. Claimant appeals certain of the factual findings and legal conclusions, asserting once again that the injury she sustained in an automobile accident on _____, while on her way home from a workshop she attended after teaching at respondent's (self-insured) high school that day, was compensable because her attendance was required. Claimant also asserts that the hearing officer was prejudiced against her, badgered her, and was predisposed to decide the case against her. The self-insured contends that the evidence sufficiently supports the challenged findings and conclusions.

DECISION

Affirmed as reformed.

Our decision in Appeal No. 990553 contains a detailed recitation of the evidence adduced at the first hearing of which official notice was taken at the remand hearing and it need not be again set forth. No additional exhibits were introduced at the remand hearing but claimant was permitted to provide additional testimony and argument.

Briefly, claimant attended an event after completing her teaching duties at a high school on _____, and was injured in a motor vehicle accident on her way home from the event. Claimant testified that on _____, after finishing her special education math teaching at the high school where she was employed, she drove to a building owned by the self-insured elsewhere in the city where she attended an event she called a "workshop" which, she said, was conducted by (company), a vendor of teaching aids including *Algeblocks,* an algebra teaching aid. She estimated that six to eight of the approximately 15 teachers in the high school's math department also attended and that they signed in and were provided with name tags and soft drinks. Claimant stated that at this event, the company personnel demonstrated the use of *Algeblocks*, which involved the use of an overhead projector, and then "walked them through" the use of the product. She said she understands that the company was attempting to sell the product to the self-insured but she was not asked by the self-insured whether she recommended the purchase of the product and, in fact, she did not resume teaching at that school after her release from the hospital and now teaches at a different school in the district. Claimant further testified that she would not characterize the event as either a recreational, social, or athletic activity and conceded that the company's interest was in selling the teaching aid to the self-insured. She insisted, however, that she was at least impliedly required to attend the event in view of the content of the March 11, 1996, invitation letter from the vendor's representative, Ms. W; the August 6, 1997, statement of former school principal, Mr. A; the July 23, 1997,

statement of Ms. D, the math department supervisor; the self-insured's requirement that teachers spend a certain amount of time each year in "in-service" training; and the fact that the student math scores at the school where claimant taught needed to be improved. These documents are fully described in Appeal No. 990553. Claimant also stated that she felt that there would have been some reprisal had she not attended but conceded she could not support that assertion with any documentation. She also conceded she had no documentation to reflect that she was credited with any in-service training time for her attendance.

The disputed issue before the hearing officer, in addition to the disability issue, was whether the claimed injury arose out of voluntary participation in an off-duty activity not constituting part of the claimant's work-related duties, thereby relieving the self-insured of liability for compensation. In Appeal No. 990553, we noted that Section 406.032(1)(D) provides that an insurance carrier is not liable for compensation if the injury "arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; . . . " We remanded for further consideration and findings because there were no findings in the first decision applying Section 406.032(1)(D) to the evidence and the hearing officer's discussion indicated that he may have decided the injury issue solely on the question of whether or not claimant's attendance at the function was voluntary.

Not appealed are findings that the company workshop was a company promotional activity; that the company was attempting to sell its line of *company* products to the self-insured; that claimant did not receive from her employer any additional wages, compensated time or expenses for attending the off-duty company promotional activity from her employer; and that claimant sustained an injury in an automobile accident "on March 27, 1998 [sic]."

Claimant does challenge findings that attendance at the company workshop was not mandatory; that her participation at the workshop was voluntary; that attendance at the company workshop was not part of her work-related duties; and that this event is not the type of event covered by Section 406.032(1)(D).

Claimant also challenges the conclusions that the injury she sustained in the automobile accident did not occur while she was in the course and scope of her employment; that the claimed injury arose out of voluntary participation in an off-duty activity not constituting part of claimant's work-related duties, thereby relieving the self-insured of liability for compensation; that because claimant did not sustain a compensable injury, she did not have disability; that the activity, a company promotional event, that claimant attended was not an off-duty recreational, social, or athletic activity; and that claimant's attendance at the activity, a company promotion event, was not a reasonable expectancy of, or expressly or impliedly required by, her employment.

Claimant had the burden to prove that she sustained the claimed injury in the course and scope of her employment and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. 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, 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 hearing officer makes clear in his decision that he did not find claimant's testimony credible and that he was not persuaded by her testimony or the evidence that claimant was required by the self-insured to attend the company's demonstration of the algebra teaching aid it was attempting to sell. Although, not articulated by the hearing officer (and never mentioned by the parties), the net effect of the hearing officer's findings is that claimant was not involved in a special mission, an exception to the "coming and going" rule. *See* Section 401.011(12)(A)(iii).

Claimant further asserts that the hearing officer was prejudiced against her, badgered her, and had his mind made up before the hearing as evidenced by the fact that his remand decision states that it was signed on February 19, 1999, the same date the original decision was signed. The latter is an obvious clerical error which does not affect the merits of the challenged findings, conclusions, and decision. Texas Workers' Compensation Commission records reflect that the remand decision was signed by the hearing officer on June 29, 1999, and we reform the decision to so reflect. We also note that Finding of Fact No. 2 refers to the date of the automobile accident as March 27, 1998, and we reform that finding to reflect the year as 1996. As for the allegations of prejudice and badgering, while the record of the remand hearing does reflect that the hearing officer, in ruling on objections and at times *sua sponte*, attempted to avoid the repetition of testimony previously given at the initial hearing and to focus claimant's responses on the precise questions asked, particularly on cross-examination, we cannot say that the record reflects unprofessional or unfair conduct of the remand hearing by the hearing officer such as would amount to a denial of due process.

The decision and order of the hearing officer are affirmed.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Judy L. Stephens
Appeals Judge