

APPEAL NO. 991892

Following a contested case hearing held on August 9, 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 concluding that the appellant (claimant) did not sustain a compensable injury to her right shoulder in addition to the injury to her left knee on _____. Claimant has requested our review of this conclusion and several underlying findings of fact, asserting her version of the evidence. In its response, the respondent (carrier) contends that the evidence is sufficient to support the challenged findings.

DECISION

Affirmed.

Since the hearing officer's Decision and Order contains a detailed recitation of the evidence with which neither party takes issue, we will set out only the essential evidence in support of our decision.

Claimant testified that on _____, while employed by (employer) as a workers' compensation claims adjuster, she arose from her desk chair and as she started to walk away, she tripped over the bottom left drawer and fell forward. She said that coworkers, including Ms. J and her supervisor, Mr. C, came over; that she had a rug burn on her left knee and a bump on her left shin; that she "laughed it off" and continued to work; that the next day her right shoulder and arm hurt; that she first sought medical attention on April 17, 1998, when she saw Dr. W who attended to her; that Dr. W told her he did not take workers' compensation claim patients and told her to see a doctor who did; that about a week before seeing Dr. W, she was involved in a minor automobile accident in a parking lot and was not injured; and that about a week after seeing Dr. W, she gave notice and left the employer in May 1998 for another job. Claimant indicated that she has had right shoulder pain and limited range of motion since the day after her fall.

Ms. J, a workers' compensation claims assistant for the employer, testified that on the day claimant said she was injured, she Ms. J sat in a cubicle behind claimant's cubicle and heard "a commotion" from claimant's cubicle; that she got up and saw that claimant, who was getting up off the floor, had tripped over a desk drawer and scraped her leg, which had a little blood on it; that the supervisor and the employer's nurse came to check on claimant; that claimant and those around her laughed about the incident; and that claimant continued to work until she left that employment about two months later and never mentioned or gave any indication that she had hurt her shoulder.

Mr. C testified that he was claimant's supervisor when the incident occurred and worked about three desks away from claimant; that when he heard the noise of her fall, he went over and saw claimant sitting on the floor on her buttocks with her hands outstretched behind her; that claimant had a bump on her shin; that the nurse attended to her injured

shin and that she declined to see a doctor; that claimant was embarrassed and "trying to down play it"; that he prepared the Employer's First Report of Injury or Illness (TWCC-1); and that claimant, an experienced workers' compensation claims adjuster, reported to him only a knee injury and not a shoulder injury. He further stated that he did not recall claimant ever later complaining of her knee or shoulder before she left her employment and that his first awareness of the claimed shoulder injury came from a phone call from the employer's chief adjuster at corporate headquarters in January 1999. Claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) is dated "1-29-99." The TWCC-1 signed by Mr. C on _____ states the injured body part as the knee. Claimant stated that she told Mr. C to correct the TWCC-1 to add her shoulder and Mr. C testified to the contrary.

Dr. W's April 17, 1998, record states the history as claimant's tripping over a drawer at work on March 17th, scraping her left knee, having right arm and shoulder pain and right side pain for a few days, and having residual shoulder pain. Claimant testified that she did not seek further medical attention before seeing Dr. H on February 12, 1999. Dr. H's record of that visit states the history as claimant's tripping and falling at work and the diagnosis as rotator cuff strain and possible tear.

Claimant had the burden of proving by a preponderance of the evidence that her compensable injury of _____, extended to her right shoulder. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). 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's findings state several factors which he found inconsistent with claimant's having actually sustained a right shoulder injury on _____.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge