

APPEAL NO. 991914

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 1999. In Texas Workers' Compensation Commission Appeal No. 991195, decided July 16, 1999, the Appeals Panel reversed the decision of the hearing officer and remanded the issue of whether the appellant (claimant) sustained a compensable injury, and whether the claimant had disability, with instructions to apply the correct standard of proof. The hearing officer did not convene another hearing and rendered another decision on August 5, 1999. She determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals, urging that the hearing officer's decision is against the great weight of the evidence, and that the hearing officer applied an incorrect standard in reaching her decision. The respondent (carrier) replies that the hearing officer applied the correct standard in reaching her decision, that the findings and conclusions are supported by the evidence, and that the decision should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____, while working as a load operator, he hit a pile of dirt and rock, causing him to be thrown forward. The claimant testified that he initially felt dizzy and nauseous, but within minutes was suffering from back pain. The claimant testified that at the time of the injury, he was not sure what was wrong with him and thought it might be the flu. Immediately following the incident, the claimant told his supervisor, Mr. J, that he felt sick and Mr. J took him to see Dr. C. A letter written by Dr. C on March 5, 1999, indicates that on _____, the claimant had complaints of dizziness, headache, and weakness that had been present for two days and complaints of back pain which increased at night; that Dr. C asked the claimant whether his pain was a result of an injury at work and the claimant said it was not work related; that on January 28, 1999, the claimant returned to see Dr. C and stated that he thought he had hurt his back while driving a front-end loader at work and he attributed it to repetitive ground contact with the front bucket; and that the claimant stated to Dr. C that he was in so much pain on _____, that he did not understand what she was asking him when she asked if his pain was work related.

The carrier submitted the recorded statement of Mr. J to support its position that the claimant did not sustain an injury at work on _____. According to Mr. J, the claimant approached him on _____; said he was dizzy and sick to his stomach; and asked to be taken to the doctor. Mr. J stated that he did not know the claimant was alleging he had hurt himself at work until January 28, 1999, after the claimant returned from his doctor's appointment. There was no disputed issue concerning the timeliness of claimant's notice of injury to the employer. The carrier asserted that, based on the medical records, the claimant was suffering from back pain that preexisted _____.

The claimant had the burden to prove that he sustained a compensable back injury on _____, and had disability. As we stated in our previous decision, expert testimony is not required in this case as we do not consider the question of causation to be beyond common knowledge. The claimant asserts that the hearing officer applied an incorrect standard in reaching her decision, relying only on lay and circumstantial evidence and disregarding the medical evidence. The hearing officer, in her Statement of the Evidence, comments:

Clearly the nature of this injury is not so scientific or technical in nature as to require expert evidence, and none was required in the initial decision herein. After reconsidering the record herein, it is clear that Claimant suffers from a back condition. While the testimony of the Claimant raised the issue of a compensable injury being the cause of that condition, the totality of the credible evidence, both lay and circumstantial does not show, by a preponderance of the evidence, that Claimant sustained an injury to his low back on _____, during the course and scope of his employment.

These comments indicate that the hearing officer based her decision on the totality of the evidence, including the medical evidence. After carefully reviewing the hearing officer's decision, we cannot agree that she applied an incorrect standard in evaluating the evidence.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence to be sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have

disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

We affirm the decision and order of the hearing officer.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge