

APPEAL NO. 000050

Following a contested case hearing held on December 10, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain an injury to her low back in addition to her right foot on _____, and that she is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. CS. Claimant has requested review of the extent-of-injury determination on evidentiary grounds. The respondent (carrier) urges the sufficiency of the evidence to support this determination. The resolution of the medical travel expense issue has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

It was not disputed that on _____, while working as a packer for (employer), claimant's right foot was injured when a motorized pallet jack ran over it. Claimant testified, through a Spanish-language translator, that she believes she injured her back when she twisted to avoid the pallet jack; that she reported the injury to the employer the same day it occurred and was taken to a (medical center) where she was treated and given crutches; and that when she returned to the medical center three days later, she complained of back pain and was told it was due to her use of crutches and the shifting of her weight to one foot. She further stated that she later began treating at a (clinic) and again complained of low back pain and that still later (January and February 1999) she was treated by Dr. B with two epidural steroid injections. Dr. B's report of January 15, 1999, reflects the chief complaint as right foot pain and states that low back and sciatic notch palpation were negative. Claimant said she eventually changed treating doctors to Dr. KS, a chiropractor, to whom she also complained about her back pain. Dr. KS's Initial Chiropractic Narrative Report of March 18, 1999, states the diagnosis as chronic, post-traumatic mechanical crush injury to the right foot and chronic reflex sympathetic dystrophy (RSD) of the right foot. This report also states that claimant first presented to Dr. KS on February 18, 1999, and described right foot, ankle, and leg pain, and low back pain. However, Dr. KS's Initial Medical Report (TWCC-61) for a "2-19-94" visit contains three diagnostic codes, none of which refer to the back.

The May 26, 1999, report of Dr. S, a pain management specialist to whom claimant was referred by Dr. KS, states the diagnosis as probable right foot RSD and does not mention back pain. Claimant further stated that Dr. S referred her to Dr. CS, also a pain management specialist. Dr. CS's report of August 15, 1999, states the diagnosis as: (1) "complex regional pain syndrome, type I, [RSD], right lower extremity," and (2) "lumbar radiculopathy syndrome with right sciatica, status post low back surgery in 1988 with new injury." Dr. CS's report of September 10, 1999, states that claimant has had both right foot, back and leg pain since the time of her accident, and that in his professional opinion, based

on the history, the physical exam, and reasonable medical probability, claimant's back, leg and foot injuries are all a result of the on-the-job injury.

Claimant challenges findings that she did not injure her low back while furthering the affairs of her employer on _____, and that her compensable injury does not include her low back.

Claimant had the burden to prove that she sustained the claimed 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 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 discussion of the evidence that he did not find it plausible that if claimant indeed injured her back on _____, there would be no mention of symptoms of a back injury in her extensive medical records before seeing Dr. KS in February 1999.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge