

APPEAL NO. 000117

Following a contested case hearing held on December 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's (claimant) alleged lumbar and cervical injuries are not a result of the compensable right knee and left 10th rib injury sustained in the course and scope of employment with the employer on _____. Claimant requests our review of this determination, asserting that it is manifestly unjust and against the great weight of the evidence and further asserting that the hearing officer allowed certain alleged, irrelevant inconsistencies to cloud the credibility of claimant's testimony and other evidence. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

The parties stipulated that it is undisputed that claimant sustained a compensable right knee and left 10th rib injury in the course and scope of employment with the employer on _____ (all dates are in 1999 unless otherwise stated).

Claimant testified that on _____, he was employed by a temporary employment agency and assigned to an ice cream plant where he worked as a loader and that on that date he was loading a truck trailer with three-gallon containers of ice cream and had stacked several rows of the containers seven feet high when a stack collapsed and five or six containers fell against his left side while his back was turned, striking his neck, back, and ribs, and knocking him into the conveyor belt which was struck by his right knee. He said he experienced the most pain in an area of his ribs and that he went home early; that the next morning, he reported the injury to Ms. B, telling her he hurt his right knee and also had pain in his side, low back, and neck; and that she instructed him to seek treatment at a particular medical center. Claimant stated that at the medical center he was treated by Dr. J and that he complained about his low back pain. He further stated that on March 19th he commenced treatment with Dr. A; that Dr. A referred him for physical therapy (PT) at a rehabilitation center; and that his last visit to the rehabilitation center was on April 20th. Claimant said that in May he changed treating doctors to Dr. M, a chiropractor, because he did not feel the rehabilitation center was helping him and because Dr. M had previously treated his neck and back following a motor vehicle accident (MVA) in 1993. Claimant said that his neck was only slightly injured in the MVA, which he indicated resulted in a workers' compensation claim, and that his back injury was minor and he was not having problems prior to _____.

The medical center's records of (day after injury) state that claimant complained of right knee pain and lower left back pain. Dr. J's record of that date states the diagnosis as right knee contusions and a fractured left 10th rib. The March 9th Employer's First Report

of Injury or Illness (TWCC-1) prepared by Ms. B states the nature of the injury as "cracked ribs and bruised leg." The employer's Worker Compensation Information form claimant signed on March 19th states that he was stacking tubs of ice cream in the truck and "it fell over on my side," and that Dr. J's diagnosis was "cracked rib/bruised knee." Dr. A's March 19th records reflect that claimant complained only of a cracked left rib and states that he "has tenderness in the area of the fractures and no other complaints." Dr. A's record of claimant's follow-up visit on April 15th reflects that claimant complained, not only of pain and a dull ache his in ribs, but also of his low back and neck. The rehabilitation center records reflect that PT was discontinued on April 20th for claimant's failure to keep appointments.

Dr. M's initial medical report of May 18th states the current complaints as neck pain, low back pain, right knee pain and left rib pain and that claimant reported having been treated for a work-related injury to the neck, upper back, left arm, and low back in May 1993 and that he was treated and released to return to work with no residuals. Dr. M's diagnoses included displacement of lumbar intervertebral disc without myelopathy, sciatica, neck sprain/strain, thoracic sprain/strain, lumbar facet syndrome, sprain of unspecified site of right knee (resolving) and leg, and myofascial pain syndrome. The diagnosis does not mention claimant's fractured rib.

The October 4th report of Dr. R, who performed an independent medical examination for the carrier, states that claimant has reached maximum medical improvement concerning his right knee and 10th rib with no residual impairment. Dr. R further states that claimant's "back and neck problems apparently are still being worked up and [he] is not sure whether they are part of this injury or a part of some other injury." Dr. R also noted that the x-rays he reviewed from claimant's chiropractor's office "are six years old."

Claimant had the burden to prove that he 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 (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.)).

In his discussion of the evidence, the hearing officer makes clear that he found claimant's evidence unpersuasive and lacking in credibility. As an appellate reviewing tribunal, the Appeals Panel will not substitute its judgement for that of the hearing officer and 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. 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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge