

APPEAL NO. 000399

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 January 13, 2000. With respect to the issues before her, the hearing officer determined that appellant (claimant) sustained a compensable injury to his left wrist only on _____, and that he did not have disability as a result of the compensable injury. In his appeal, the claimant argues that the hearing officer's determinations that his compensable injury did not include his left shoulder and neck and that he did not have disability are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant sustained a compensable injury to his left wrist on _____, and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, he was working as an electrician's assistant and had been so employed for about eight months. He stated that a 17-inch steel hook, weighing 10 to 20 pounds, fell from 30 feet above, hitting him on the left wrist and deflecting to hit his left shoulder and neck. The claimant testified that he immediately developed a bump on his left wrist and that he also had pain in his left shoulder and neck; that he reported his injury to Mr. F, his supervisor, immediately after it happened; that he finished his shift on _____; and that he continued to work for the employer in a light-duty position for approximately two days, when he was terminated. The claimant stated that he first sought medical treatment on April 2, 1998, after he was fired, with Dr. H, a chiropractor, and that Dr. H took him off work at that time. In an initial report dated April 2, 1998, Dr. H noted tenderness to palpation and marked swelling in the left hand/wrist area. Dr. H diagnosed a left hand/wrist crush injury and a left hand/wrist contusion.

The claimant testified that he was not satisfied with his progress under Dr. H's care, so he sought treatment from Dr. B, a chiropractor, to whom he had been referred by his cousin. Dr. B's records reflect that the claimant reported that he received a "severe laceration" on his left wrist and that he had "immediate sharp pain in the hand and numbness and left shoulder that was a stiffness and achiness." Dr. B's reports reflect constant complaints of left wrist and shoulder pain; however, they do not reference neck problems. On August 11, 1998, the claimant underwent nerve conduction velocity testing on his left upper extremity that was normal. A September 4, 1998, left shoulder MRI demonstrated "findings consistent with mild supraspinatus tendinobursitis with rotator cuff impingement noted secondary to moderate lateral subacromial arch stenosis" On December 4, 1998, Dr. B certified that the claimant reached maximum medical improvement as of that date with an impairment rating of 10% for loss of range of motion in the left wrist and shoulder.

Mr. F, the claimant's supervisor, testified that the claimant was hit on the wrist by a three-inch metal bolt that weighed between one and two pounds. He stated that the bolt hit the ladder first and then it hit the claimant's wrist. Mr. F maintained that the bolt then fell to the ground and that it did not hit any other part of the claimant's body. Mr. F denied that the claimant was hit with the large hook as he claims, insisting that he saw the large hook on the poles they were installing after the incident. Mr. F testified that in 14 years of employment with the employer, he has never seen the large hook, which he estimated was three feet long and weighed 30 to 40 pounds, fall. Mr. F stated that the claimant had a "knot" on his wrist after it was struck with the bolt; however, he insisted that the claimant continued to work his regular duties until he was terminated a couple of days after the incident for his third instance of sleeping on the job.

The carrier introduced a statement of Mr. P, the employee who was on the ladder at the time of the incident. Mr. P stated that a bolt or screw, which he estimated "weighed about a pound or a pound and a half," fell and hit the claimant's left wrist. Mr. P further stated that the claimant continued to perform his regular duties after the incident until he was terminated for sleeping at work. The carrier also introduced a statement from Mr. H, an electrical foreman with the employer. Mr. H stated that the claimant's wrist was hit by a bolt and that he had a "small rise on his wrist." Mr. H further stated that he asked the claimant if he wanted to go to the doctor and the claimant declined medical treatment. Finally, Mr. H stated that the claimant continued performing his regular duties after the incident until he was terminated for sleeping on the job.

The claimant has the burden to prove that his compensable injury extended to his left shoulder and his neck. That question presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. Generally, questions of injury and disability can be established based on the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer need not accept the testimony of the claimant at face value; rather, it only raises an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain his burden of proving that the compensable injury extended to his left shoulder and neck. In that regard, the hearing officer noted that the evidence from Mr. F, Mr. P and Mr. H was more credible as to the mechanism of injury and the nature of the injury caused by the falling bolt. The hearing officer noted that if a piece of equipment as big as the one described by the claimant had hit him, "there should have been a more substantial injury at

the time of the incident." In addition, the hearing officer noted that the claimant did not seek medical treatment until after his termination, that he only complained of his left hand/wrist to Dr. H, and that Dr. B's records "contained several critical errors." The hearing officer was acting within her province as the fact finder in considering each of those factors and in deciding to reject the claimant's testimony and the other evidence tending to suggest that the claimant injured his left shoulder and neck in addition to his left wrist in the incident at work. She simply was not persuaded that the claimant had sustained his burden of proving the causal connection between his compensable injury and a left shoulder or neck injury. Our review of the record does not reveal that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 15 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserts that the hearing officer erred in determining that he did not have disability as a result of his compensable injury. Again, there was conflicting evidence on the issue of disability. The claimant maintained that he worked in a light-duty position following his injury until his termination and that thereafter he was taken off work by both Dr. H and Dr. B. However, Mr. F, Mr. P, and Mr. H stated that the claimant continued to perform his regular duties following his injury, until he was terminated for sleeping at work. As the fact finder, the hearing officer was free to give more weight to the evidence from Mr. F, Mr. P, and Mr. H that the claimant's injury did not prevent him from performing his regular duties and to determine, that as a result, the claimant did not have disability within the meaning of the 1989 Act because of his compensable injury. Nothing in our review of the record demonstrates that the hearing officer's disability determination is so contrary to the great weight of the evidence as to compel its reversal on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge