

APPEAL NO. 000687

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 March 9, 2000. The hearing officer determined that he appellant (claimant) did not sustain a compensable injury to the left knee and left heel on _____, and that he did not have disability. The claimant appeals, expressing his disagreement with these determinations. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, an electrician, testified that on _____, as he was getting off a scissors lift, his left foot slipped out and he twisted his left leg and heel, but did not fall. There were no witnesses. The claimant further said that he immediately reported the incident to Mr. P, a supervisor, but no written report was filled out at that time. He continued working until October 11, 1999, he said, with pain in his left leg. On October 11, 1999, according to the claimant, he called his employer to say he could not work because of his left leg and on October 12, 1999, saw Dr. P, who placed him in an off-work status. The claimant returned to pick up his paycheck on October 15, 1999, and said he again told Mr. P about the incident. Mr P reportedly responded that he was mad because the claimant did not report it earlier. The claimant also said he told his stepbrother, Mr. J, who also worked for the employer, about the incident and that Mr. J witnessed the conversation with Mr. P on _____. The claimant was eventually diagnosed with a torn meniscus and ankle/heel sprain.

The claimant also admitted that he signed a paycheck release questionnaire on both October 8 and 15, 1999, on which he stated that he had no work-related injuries. He said he did this because he thought the statement applied only to lost-time injuries. The claimant also said that he had an incident at home about a week and one-half before the incident at work in which he injured his toes when he lost his balance.

Mr. O, the immediate supervisor, testified that the claimant never reported an injury to him and that he saw the claimant limping between September 23 and 27, 1999. He said he asked the claimant what was wrong and the claimant said he hurt himself trying to kick his dog out of the doorway to his house and hit the floor instead. Mr. P testified that he spoke with the claimant on _____, about his foot hurting, but the claimant never connected this with work. Rather, according to Mr. P, the claimant said he hurt his foot at home when he tripped on the porch. Mr. P further said that the claimant did not call in sick on October 11, 1999, but called in on October 12, 1999, to say he was going to the doctor without saying why. Mr. P said he next saw the claimant on October 15, 1999, when he came to pick up his check and only then did he say his left leg problems were work related. Mr. P also testified that Mr. J was not present on _____, when Mr. P spoke with the claimant and that he, Mr. P, never saw

the claimant limping. He also said that Mr. J told him the claimant slipped while at the doctor's office. Mr. P also testified that he originally said in a recorded statement that the conversation about the claimed injury occurred on _____, but as he later clarified in the recorded statement, the conversation actually occurred on October 15, 1999. In a report he later completed, Mr. P said he was just restating the claimant's account of what claimant said happened on _____.

The claimant had the burden of proving that he sustained both the injury and disability as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so presented questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer considered the conflicting evidence and concluded that the claimant did not sustain the injuries at work as claimed. In her discussion of the evidence, the hearing officer commented that the claimant's explanation for why he signed the check release questionnaire (because he thought it only applied to lost-time injuries) made sense only for the first signature on October 8, 1999, but not for the second signature on October 15, 1999, after he had already lost time. In his appeal, the claimant asserts that the hearing officer improperly based her decision solely on the questionnaire and ignored other evidence that supported his position, particularly the reports of the employer which contained the claimant's statement of what happened. The claimant also stated that he was not informed by his supervisor about the proper procedures for reporting an injury. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she could accept or reject all, part, or none of the claimant's evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. Thus, in determining what facts had been established by the claimant, she could give special weight to the questionnaire and the claimant's explanation of why he did what he did, as well as to all other explanations of the various witnesses for seeming inconsistencies between their testimony and prior recorded statements. Additionally, although the injury was timely reported for purposes of the 1989 Act, ignorance of the law or the employer's policy is not determinative in this case of either of the issues in dispute. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge