

APPEAL NO. 001023

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 April 26, 2000. The hearing officer determined that the compensable injury sustained on _____, does not include an injury to the head and cervical spine as well as vision/hearing loss. The appellant (claimant) appeals this determination on sufficiency grounds. The respondent (carrier) replies that the great weight and preponderance of the evidence supports the hearing officer's decision.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to both knees, bilateral shoulders, and the lumbar and thoracic spine on _____. The claimant testified that on _____, he was walking backwards with a shovel in his hand when his right leg fell into a hole, causing him to fall backwards landing on his back. The claimant said that he suffered a bruise on the back of his head and approximately a month later he began to suffer hearing loss in his right ear and vision loss in his right eye.

The claimant testified that he told his treating doctor, Dr. V, that he had neck pain, blurred vision, and hearing loss but Dr. V would not treat him because he was not getting paid. Dr. V's records of March 17, 1999, state that the claimant struck his low back and head and that the claimant complained of dizziness and blurred vision after striking his head. The medical records do not contain a diagnosed cervical injury and the records of Dr. B, dated October 5, 1999, indicate that the claimant did not complain of neck pain.

The claimant had the burden to prove the extent of his compensable injury. The 1989 Act defines "injury," in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence.

The hearing officer found the medical evidence insufficient to causally link the claimant's loss of hearing and vision to the fall on _____. While the claimant's own testimony could establish an injury to his head and cervical spine, the medical evidence

does not provide a diagnosis of a head or cervical spine injury. The hearing officer resolved conflicting evidence and concluded that the claimant did not sustain an injury to his head and cervical spine, as well as vision and hearing loss, on _____. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we will reverse such decision only if it is so contrary to 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 Co., 715 S.W.2d 629, 635 (Tex. 1986). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge