

APPEAL NO. 001108

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 20, 2000. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury and that he did not have disability. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working with a high-pressure gun finishing a table, when the gun malfunctioned and struck him on the bridge of his nose. The claimant stated that the gun caused a laceration on his face which bled continuously and that he reported his injury shortly after it happened to Mr. M and Ms. G. The claimant stated that he continued to work after the incident and that about five days after it happened, he began drooling, his eyes were constantly blinking, and he was having difficulty speaking, so he decided to seek medical attention.

The claimant initially sought treatment on August 6, 1999, at the emergency room. He was diagnosed with Bell's Palsy. The claimant testified that the doctors at the emergency room told him he had facial paralysis and that it might be caused by a virus. On August 11, 1999, Dr. C conducted a neurological examination of the claimant. In his report, Dr. C stated that the claimant "has a simple but fairly complete facial palsy secondary to a Bell's Palsy." In addition, Dr. C noted that there was "probably a significant augmentation accounting for this relatively breathless scanning speech pattern and the eyes rolling back, and that there is a functional overlay to a typical Bell's Palsy."

On August 2, 1999, the claimant had a brain MRI, which revealed left frontal and ethmoid sinusitis and was otherwise unremarkable. On September 7, 1999, Dr. S, performed a neurological examination of the claimant at the request of the carrier. Dr. S stated that the claimant had a "normal neurological examination with exception of a left hemisensory syndrome" and that he had "questionable conversion reaction" and "questionable hypochondriasis."

Ms. G, employer's personnel manager, testified that the claimant did not come to her on _____, with blood on his face. She stated that on August 6, 1999, the claimant came to her office and she knew that something was wrong with his face; however, she also testified that she asked the claimant if he had been injured at work and that he stated that he had not. Ms. G insisted that although she knew there was something wrong with the claimant on August 6, 1999, she did not know that he was claiming a work-related injury until she received a telephone call from the carrier at some point after August

6th. In a letter to the carrier, Mr. M stated that the claimant did not report an injury to anyone with the employer on _____.

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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, the existence of an injury can be established by the claimant's testimony alone, if it is believed by the hearing officer. Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989). However, the testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos, supra; 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 a compensable injury. A review of the hearing officer's decision demonstrates that she was not persuaded that the evidence presented by the claimant was sufficient to carry his burden of proving injury. The hearing officer specifically noted that claimant's testimony about how the laceration occurred "was not supported by witness testimony and was specifically contradicted by the statements of his supervisors." In addition, the hearing officer noted that the medical evidence was insufficient to establish the causal relationship between the Bell's Palsy and the purported _____, injury. The hearing officer was acting within her province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's injury determination 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., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that the claimant did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge