

APPEAL NO. 001392

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 May 8 and May 24, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury and had disability. The appellant's (carrier) request for review, noting a one-day typographical error in the date of injury in the dispositive conclusion, asserts that the hearing officer erred in determining that the claimant sustained a compensable injury on that date. In the alternative, the carrier urges that the claimant's evidence proved no more than that he had a slip-and-fall incident at work, which resulted in pain, but not injury, to the physical structure of his body, and that the evidence is insufficient to support the hearing officer's injury determination. The carrier also contends that because the compensable injury determination cannot be sustained on appeal, the determination of disability must also fall. The claimant's response urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed as reformed.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), while working for the employer as a cleaner on the night shift at a mining site, he was standing on an enclosed steel platform cleaning grease and oil off the gears of the drag line machine and was covered with grease and oil; that he decided to go get a drink of water; that as he started to lift a leg over the gear enclosure guardrail, his other foot slipped out from beneath him; and that he grabbed for the guardrail with his greasy glove but could not hold on and fell backwards striking his tailbone, buttocks, and low back on some five-gallon plastic buckets filled with bolts and other materials. He said he got up at once with low back pain and "lightening sensations down his left leg," reported the injury to supervisor Mr. S, and requested that an ambulance be called, and that Mr. S refused, stating that the safety manager, Ms. W would lose a bonus if an injury were reported. The claimant indicated that he could not complete his shift due to the back pain so he went to the car of the coworker who had driven him to work to wait until he could arrange transportation to the hospital emergency room (ER). He stated that after being seen at the ER, he got a ride to the city in Texas where he then resided and commenced treatment with Dr. F. The claimant stated that Dr. F treated his low back injury with medications; that Dr. F discussed the possibility of other treatment modes including physical therapy, injections, and surgery but that he held off on those because the carrier refused to authorize an MRI so that Dr. F could obtain a definitive diagnosis. The claimant also stated that all the work he has done, such as roofing, tree cutting, brick work, and construction, has been heavy work and that he has not been able to work since he slipped and fell on _____.

Ms. W testified that when she came to work on the morning of _____, she spoke to the claimant, who was in the coworker's car; that the claimant told her he had fallen and strained his back; and that she volunteered to take him to the hospital and he declined the offer. Ms. W further stated that she obtained statements from Mr. S and from another supervisor, Mr. B, and that they both told her "they knew [the claimant] had fallen but that he had told everyone concerned that he was okay." She also said she obtained statements from a number of coworkers who had been in the area and that while she got the impression that the claimant was claiming that he was injured in the incident, she thought he has "more of a near miss than an injury." The accounts of the coworkers varied in the details but generally placed the claimant at the guardrail and slipping.

The _____ ER record reflects that the claimant gave a history of working on a rig at night, slipping on some greasy gears, and landing on some buckets on his back. The record also reflects that the claimant complained of back pain, with intermittent sharp discomfort radiating down his left leg, along with some paresthesia and numbness. The diagnosis is stated as acute low back pain secondary to trauma with sciatic nerve discomfort. A (clinic) record of _____ states that the claimant is not to work until he is seen in the clinic.

Dr. F's March 3 record states that the claimant gave a history of slipping and tripping over some gears and cans of bolts and of falling backwards heavily onto his buttocks. Dr. F found a lot of low back tenderness and muscle spasm in the paraspinal musculature on the left, diagnosed acute lumbar radicular syndrome with a history of recent trauma, prescribed pain medication and a lumbar corset, and took the claimant off work "since he is in obvious acute pain." Dr. F's Initial Medical Report (TWCC-61) of March 3 contains the diagnosis codes for lumbar region sprain and lumbar disc displacement. Dr. F reported on March 29 that he had ordered an MRI which is pending a decision by the carrier, that he continues the claimant's no work status, and that the claimant is a candidate for epidural steroid injections. Another of Dr. F's records has the claimant off work at least until April 9. Dr. F wrote on April 7 that he suspects a ruptured spinal disc and that he has ordered an MRI to confirm that condition and plan the treatment, but that he cannot get the study done because the claimant is "having insurance problems."

The carrier challenges findings that on _____ the claimant slipped and fell while in the course and scope of his employment; that he sustained trauma to his low back in the slip and fall on _____ which is characterized by low back pain and radicular symptoms into his left leg; that he reported the slip-and-fall incident and the pain from that incident to his employer on _____ and 29; that although a specific diagnosis has not been given, the claimant has sustained some damage or harm to the physical structure of his body as a result of the slip-and-fall incident at work on _____; and that as a result of the injury to his low back on _____, the claimant has been unable to obtain and retain employment at his preinjury wage equivalent from February 29 through the date of the hearing.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues 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.)). As an appellate reviewing tribunal, the Appeals Panel will not 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 and 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).

We do not find reversible error in that part of Finding of Fact No. 5 which states that a specific diagnosis has not been given. Though not mentioned by the hearing officer, we have noted the diagnosis codes on Dr. F's March 3 TWCC-61. Conclusion of Law No. 3 states that the claimant sustained a compensable injury on _____. This is an obvious typographical error given all the references to the _____ date in the findings of fact and we reform that date in Conclusion of Law No. 3 to read _____.

We affirm the hearing officer's decision and order, as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge