

APPEAL NO. 001677

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 June 30, 2000. The hearing officer determined that the respondent's (claimant) compensable injury includes a traumatic brain injury but does not include a left leg injury. The appellant (self-insured) appeals the brain injury determination, asserting that the hearing officer erred in relying on the opinion of the designated doctor because the claimant came up with new symptoms when examined by the designated doctor and because the doctors who examined him during the 14 months preceding the designated doctor's exam, including a treating doctor, did not describe such symptoms or diagnose a brain injury. The claimant's response urges the sufficiency of the evidence to support the challenged finding and points out that the treating doctor did opine that the claimant has a traumatic brain injury at the neuronal level based on a neuropsychological evaluation.

DECISION

Affirmed.

The claimant testified that on _____, he and a coworker were working on a heating and air conditioning unit at a school and that while he was kneeling down with his face near the unit, with the coworker right behind him, a sudden, bright electrical flash "exploded" from the unit and he instinctively "jerked back." He used the words "arcing" and "like a bolt of lighting" to describe the event and did say no pieces flew around. He stated that his eyes burned and the top of his head felt as though it was on fire; and that the next thing he remembered was being in a parking lot with the coworker where they got into their trucks and drove back to the school. The claimant said the next thing he recalled was standing near a flag pole at the school. He said that after reporting the incident he was sent to Dr. L, an eye doctor, because his eyes were burning and that he has blurred vision to this day and now wears glasses. The claimant further testified that he was treated for his neck injury by Dr. W; that Dr. W referred him for evaluation by Dr. B, an orthopedic surgeon, and by Dr. C, a neurologist; and that he began to have persistent headaches and pain behind one eye and other symptoms including narcolepsy and a twitching eye. As the claimant put it, "[a]s time went on, I noticed more things happening to me" and he mentioned his inability to concentrate and problems with his memory. He also said that over time he began to experience frequent episodes of anxiety, depression, and crying spells; that he did not relate these symptoms to the accident; and that he saw his family doctor, apparently referring to Dr. W, who referred him for a neuropsychological evaluation by Dr. R. He also said he was examined by the designated doctor, Dr. EC, and by Dr. M, a carrier-selected doctor. The claimant insisted on cross-examination that he told most if not all of these doctors about his headaches and some of the other developing symptoms, whether or not such revelations were recorded by the doctors.

Dr. C's August 31, 1999, report concludes that the claimant's neurologic examination, NCVs, EMG, and cervical spine MRI were normal. In his February 23, 2000, report, Dr. EC indicated that he would not certify that the claimant had reached maximum medical improvement until he had a diagnostic work-up to rule out an intracranial injury. Dr. EC wrote on May 31, 2000, that he believes the claimant suffered a concussion head injury; that a cranial MRI can miss detection of cranial tissue injury; and that a neuropsychological evaluation may be used to determine the presence or extent of the injury.

Dr. W wrote on June 30, 2000, that Dr. EC diagnosed a traumatic brain injury and recommended an MRI to rule out a subdural hematoma or a possible intracranial injury; that the MRI was negative for a hematoma; that following Dr. R's June 8, 2000, neuropsychological evaluation, Dr. R diagnosed post-traumatic concussion syndrome and traumatic brain injury; and that he agrees with Dr. EC and Dr. R that the claimant had a traumatic brain injury, noting that such an injury can injure the brain at the neuronal level and that that type of injury would not necessarily show up on a brain scan. Dr. EC's February 23, 2000, report and Dr. R's very extensive June 8, 2000, report of his neuropsychological evaluation support Dr. W's summary.

The claimant had the burden to prove that he sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Obviously, expert medical evidence was required to prove that the claimed traumatic brain injury was caused by the accident at work. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, 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 an appealed factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not do 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). The hearing officer could credit the opinions of Dr. EC, Dr. R, and Dr. W, notwithstanding the delays in the onset of certain of the claimant's symptoms and the absence of mention of those symptoms in the reports of the referral doctors who appear to have been looking at the eye and cervical injuries.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Thomas A. Knapp
Appeals Judge