APPEAL NO. 001812

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 24, 2000. The hearing officer determined that the appellant (claimant) injured her right knee in the course and scope of her employment on _____; that the claimant did not timely report the injury to the respondent (self-insured) and did not have good cause for not timely reporting the claimed injury; that the self-insured is relieved of liability for the injury; and that since the claimant did not sustain a compensable injury, the claimant did not have disability. The determination that the claimant injured her right knee in the course and scope of her employment has not been appealed and has become final under the provisions of Section 410.169. The claimant appealed, contended that the hearing officer erred in admitting two of the self-insured's exhibits, contended that the determinations concerning notice to the self-insured and disability are not supported by sufficient evidence, and requested that the determinations adverse to her be reversed. The self-insured responded, contended that the hearing officer did not err in admitting the exhibits, urged that the evidence is sufficient to support the appealed determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

We first address the claimant's contention that the hearing officer erred in admitting page 3 of Self-Insured's Exhibit No. 8, a letter from Mr. M dated July 20, 2000, and Self-Insured's Exhibit No. 9, a letter from Mr. B dated October 6, 1999. The claimant objected to the admission of the exhibits, contending that they were not timely exchanged. The self-insured presented a document indicating Self-Insured's Exhibit No. 9 was exchanged at the benefit review conference (BRC) held on May 25, 2000. The claimant did not offer evidence to counter that document. The hearing officer did not err in admitting Self-Insured's Exhibit No. 9.

The self-insured had admitted into evidence pages 1 and 2 of Self-Insured's Exhibit No. 8. It is a transcript of an interview of Mr. M conducted on August 26, 1999. Mr. M states that he was the high school principal where the claimant worked. The transcript indicates that there was noise on the audiotape of the interview of Mr. M and that answers to questions of whether he saw the claimant fall and whether she reported the injury could not be heard. The adjuster representing the self-insured at the CCH stated that soon after the BRC held on May 25, 2000, the self-insured began attempting to obtain a statement from Mr. M; that Mr. M no longer worked for the self-insured; that she obtained the letter from Mr. M dated July 20, 2000, on that day; and that on that day she transmitted a copy of the letter to the ombudsman assisting the claimant and mailed a copy to the claimant. The hearing officer found good cause for not exchanging the letter earlier and admitted it. Evidentiary rulings by the hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary on the part of the hearing officer. Texas

Workers' Compensation Commission Appeal No. 94816, decided August 10, 1994. The standard of review on such evidentiary issues is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 93580, decided August 26, 1993. In determining whether there was an abuse of discretion, the Appeals Panel looks to see of the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The Appeals Panel has stated that the hearing officer should look at diligence in obtaining a document in addition to timely exchanging it after it is received. The hearing officer did not err in admitting the letter from Mr. M dated July 20, 2000.

The Decision and Order of the hearing officer contains a statement of the evidence. Only the evidence pertaining to timely reporting the injury to the self-insured will be included in this decision. The claimant contended that she timely reported the injury to the self-insured. She did not contend that she had good cause for not timely reporting the injury. The claimant testified that she reported the injury to Mr. M the day that it happened. In a written statement dated April 19, 2000, Ms. DC said that she saw the claimant fall on _____, and that the claimant "talked to [Mr. M] and [Ms. S] and I think [Mr. B]." The claimant's daughter testified that she also worked for the self-insured and that she saw her mother fall. She said that she was standing next to her mother when she told Mr. M that she had fallen from the stage, that Mr. M asked the claimant if she was hurting, that the claimant said that she was not hurting at the time, and that they went back to work. A transcript of a July 1999 interview of the claimant's daughter indicates that she was asked when the claimant reported the injury and the transcript indicates that the answer could not be heard because of noise on the audiotape. Ms. C testified that she was standing next to the claimant when she fell, that she did not see the claimant discuss the fall with Mr. M or Mr. B, and that she was not aware of any knowledge Mr. M or Mr. B may have had of the claimant's injury. Mr. B testified that in February 1999 he was the director of transportation for the self-insured. He said that he and the claimant had been friends for years; that the date the claimant was injured, she did not tell him that she fell and hurt herself; that while the claimant worked for the self-insured she did not tell him that she fell at work; that he thought that it was correct that the claimant quit work on or about March 10, 1999; and that after the claimant no longer worked for the self-insured, she told him about falling at work and hurting her knee. In a letter dated July 20, 2000, Mr. M said that he was the principal at the high school where the claimant worked from August 1990 until July 1999; that he did not remember any incident in which the claimant informed him that she had an injury or felt as though she would require medical treatment; and that as a high school principal he was very sensitive to any workplace injuries and always reacted with concern for employees.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo

1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. In a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations concerning the claimant's reporting the injury to the self-insured and the self-insured's being relieved of liability are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the appealed determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge