

APPEAL NO. 001913

Following a contested case hearing held on July 26, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) sustained a compensable injury on _____; that the claimant's injury is not a producing cause of her right leg and foot problems; and that the claimant does not have disability as a result of the _____, injury. The claimant has requested our review, asserting that the great weight of the evidence established that she injured not only her low back and left leg but also her right leg and foot, and that she had disability from such extended injury. The respondent (self-insured) urges in response that the evidence is sufficient to support the challenged findings.

DECISION

Affirmed.

The hearing officer's decision and order contains a detailed recitation of the evidence with which neither party takes issue. Accordingly, only so much of the evidence will be set out as is necessary for our decision.

The claimant testified that on _____, while working as a school crossing guard, she exited the school library and slipped in a puddle of water, struggled to maintain her balance, and ended up with her hands outstretched against the building to break her fall but she did not fall down. She said that she felt pain, mostly in her low back, and that she continued to work until the school term ended on June 8, 1999; that she commenced treatment with her family doctor, Dr. M, on June 16, 1999; and that she returned to her job on July 22, 1999, when another school term commenced.

Ms. O testified that she is a secretary for the self-insured and has known the claimant a long time. She said that on _____, the claimant came to see her around the noon hour, stated that she had slipped in some water, and asked for an accident report which she filled in. Ms. O said she then typed the report and read it back to the claimant who made no corrections. In that report, the Employer's First Report of Injury or Illness (TWCC-1), the explanation for how the injury occurred states that the claimant hurt her left leg and foot and also her lower back. Ms. O further testified that the claimant continued to work until June 8, 1999, when the school term ended, and that when classes resumed on July 22, 1999, the claimant came to her office, limping, and asked to see the accident report. Ms. O said that the claimant then said that she thought Ms. O had typed the report incorrectly, claiming to have told Ms. O that she had hurt both legs. Ms. O was confident she had not made such an error, stating that she has been completing accident reports for 15 years and has had training classes in preparing these reports.

Ms. H, a security guard at the school, testified that she works closely with the claimant on every school day; that she saw the claimant slip in the water on _____;

and that she and the claimant laughed and joked about it at the time because of the dancing around the claimant had to do to recover her balance and avoid falling. She said that the claimant did not thereafter appear to be in pain or have any discomfort before school ended on June 8, 1999. Ms. H further stated that when the claimant returned to school on July 22, 1999, she was limping and that a week or two later the claimant took off her shoe and showed Ms. H her swollen ankle.

August 4 and 5, 1999, reports of MRI, bone scan, and x-ray testing of the right ankle and heel revealed a stress fracture. Dr. M referred the claimant on October 6, 1999, for an x-ray of her right heel and the radiologist's impression was a healing fracture of the posterior aspect of os calcis, possibly a stress fracture. The claimant indicated that she developed some conflict with Dr. M and obtained permission to change treating doctors to Dr. G, a chiropractor.

Dr. G testified that he began treating the claimant on January 4, 2000, and took her off work on that date. He expressed surprise that the claimant had waited until June 16, 1999, to seek medical attention, stating that a stress fracture would produce immediate pain. Dr. G indicated that he has provided the claimant with chiropractic care on about 45 occasions since taking over her treatment. His January 4, 2000, report states the diagnosis as ankle sprain/strain, closed calcaneus fracture, and lumbar sprain/strain. Dr. G's report also states that "these conditions are within medical probability directly caused by the injury of _____." Documents in Dr. G's records reflect that he had the claimant off work through May 15, 2000.

The claimant challenges findings that during the course and scope of her employment on _____, she slipped in a puddle of water injuring her low back and left leg; that she first sought medical attention for her right foot and leg on June 18, 1999, with Dr. M; and that she was not unable to "obtain or [sic] retain" employment at wages equivalent to her preinjury wage due to her claimed low back and left leg injury of _____. She did not, however, specifically dispute a finding that her right calcaneus stress fracture and right leg and foot problems were not produced by the compensable injury of _____.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability from a compensable injury, as the term "disability" 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). The hearing officer explains in her discussion of the evidence how she finds the claimant's evidence wanting in meeting her burden of proof.

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