

APPEAL NO. 002171

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 August 17, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000) and that the claimant did not have disability.

The claimant appeals, contending that even a slight sprain or strain constitutes an injury. The claimant on appeal also seems to be urging an aggravation theory but there was no evidence of a preexisting condition. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a sales associate/cashier at a convenience store (employer). The claimant testified that at about 8:30 a.m. on _____ he sustained an injury when a counter he was leaning against shifted slightly or tilted. The claimant, at various times, alleged a back injury because he had "jolted" his back and that the doctors said that he had mild reflex sympathetic dystrophy (RSD) in his left wrist. Working with the claimant was the employer's assistant manager, JD, who denied the claimant sustained an injury at the time and place alleged. Rather obviously the claimant and JD did not get along.

What makes this case unusual is that the event in question was recorded by the store surveillance video camera. The tape was offered into evidence and was viewed during the CCH. The hearing officer, at the CCH, said that he "saw [the event] clearly" and in his Statement of the Evidence and Discussion remarked:

I reviewed that tape, in slow motion, numerous times in front of the parties. The tape speaks for itself, and it shows the Claimant reaching over to pick an item up, resting his left hand on a counter, and the counter tilting somewhat. However, that tape shows me that the Claimant's left wrist was not in anyway excessively bent backwards. In fact, the Claimant continued his normal activities as if nothing at all had happened.

The claimant was seen by several doctors who have varying diagnoses including cervical strain/sprain, wrist strain/sprain, RSD, paresthesias and dyscesthesias; however, the histories the doctors recite usually involve a "fall forward and he partially [broke] his fall," or that "the counter gave way and tilted backwards with [the claimant] sustaining a hyperextension-type injury to the wrist." The hearing officer, in the discussion portion of

his decision, states ". . . after my review of the medical reports, there are serious discrepancies in how the Claimant described his injury to his doctors."

Our review of the record indicates that the hearing officer accurately described the videotape and noted the discrepancies between what was seen on the videotape versus the verbal description that was given to the doctors.

We cannot say that the hearing officer's comments and findings were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge