

APPEAL NO. 002742

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on November 2, 2000. The hearing officer, resolved the sole disputed issue by concluding that on _____, the appellant (claimant) sustained a compensable head injury in the nature of a forehead contusion and that her current conditions of head injury, migraine headaches, myofascial pain syndrome, cervical spondylosis, and loss of vision are not compensable injuries. The claimant, who did not appear at the hearing, has filed a timely appeal. She asserts that shortly after her accident at work on _____, she began having severe migraine headaches and has also had a dramatic change in her vision; that she understood from the attorney for the employer that the employer would take care of her medical bills and that she could seek further treatment; and that she did not appear at the hearing because she thought it had to do with her filing a lawsuit which she did not want to do. Respondent (carrier) filed a response which notes that the claimant does not specifically dispute any of the findings, which objects to consideration of the claimant's statements of fact as new evidence on appeal, and which urges the sufficiency of the evidence to support the hearing officer's determinations. The file does not contain a response from Respondent (subclaimant).

DECISION

Affirmed.

Following discussion with the ombudsman assisting the subclaimant and the carrier's representative at the outset of the hearing, the hearing officer stated that he found that the claimant was properly notified of the hearing and had declined to attend, apparently because she is not pursuing a workers' compensation claim in her own behalf. According to the subclaimant and the documentary evidence, the benefit review conference was requested so that the disputed issue could be litigated and the subclaimant could determine the appropriate party to bill for \$143.12 in that the carrier refused payment. Section 409.009 provides for the filing of a claim by a subclaimant who has provided compensation, including health care, to an employee. Section 413.042(a) provides in part that a health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the claimant by the provider unless the injury is finally adjudicated as noncompensable.

No testimonial evidence was adduced at the hearing and the subclaimant and the carrier submitted their respective cases to the hearing officer on documentary evidence and argument.

The hearing officer found that on _____, the claimant sustained a forehead contusion injury while working in the course and scope of her employment as a result of being struck by a floor cleaning machine; that she has not pursued a claim regarding the compensability of her current various medical conditions; that she has not contacted the

Texas Workers' Compensation Commission's field office or an ombudsman about the disputed issue nor has she responded to attempts to contact her; and that her _____, injury was not a producing cause of a current head injury, migraine headaches, myofascial pain syndrome, cervical spondylosis, or loss of vision.

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's statement and discussion of the evidence explain why he did not find credible the statement of the claimant's doctor, Dr. H, that the migraine headache history, myofascial pain syndrome, and cervical spondylosis he diagnosed on June 1, 2000, are related to the _____, injury.

The decision an order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge