

APPEAL NO. 010654

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 February 12, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ (all dates are 2000 unless otherwise noted, and that the claimant did not have disability).

The claimant appealed, contending that the hearing officer's decision was "nearly identical" with a companion case and otherwise the hearing officer's decision is not supported by the evidence. The claimant asserts that the hearing officer cites nothing in his decision to support his conclusion. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant was employed by a temporary staffing agency (employer) and assigned to work in the client's paint factory (company). The claimant testified that on _____, she and a coworker, Ms. SB, were assigned to clean up some paint spills. The claimant testified that as she and Ms. SB were cleaning up the spills, some five-gallon buckets of paint fell off a second tier pallet striking the claimant and Ms. SB. The mechanics of how the accident occurred are in dispute. The claimant asserts that she sustained neck, back, and a left ear abrasion injury. The claimant testified that she had cut the plastic wrap covering the top pallet of 16 buckets of paint.

The claimant and Ms. SB were taken to a hospital emergency room (ER) where both were taken off work for three days. The evidence is unclear whether the claimant briefly lost consciousness or not. The claimant returned to the ER on September 25, where she was assessed with "subacute neck and back contusion." Subsequently, the claimant began treating with Dr. C, a chiropractor, who diagnosed cervical and lumbar sprains/strains and took the claimant off work. A report dated October 26 releases the claimant to return to work without restrictions on November 23. The claimant was examined by Dr. B, a Texas Workers' Compensation Commission-selected independent medical examination doctor, who, in a report dated December 7, notes a "well-healed, small laceration about the right ear" (emphasis added) and diagnosed a cervical and lumbar strain. In response to a question whether the claimant sustained disability, Dr. B comments:

it appears that the claimant sustained a right ear laceration and may have sustained an injury to the neck and low back. Due to the presence of functional overlay and symptom magnification, it is difficult to say exactly the extent of injuries. There is a lack of documentation of objective physical

findings, objective medical data, or neurological deficits to identify any current or expected future disability as a result of the events of 09/21/2000.

The hearing officer made clear that he found the claimant's testimony "neither credible nor truthful" and gave examples of how he found her testimony regarding the mechanics of the claimed injury "inconsistent." Regarding the claimant's complaint that the hearing officer's decision in this case and the case involving Ms. SB, both heard on the same day in different proceedings, as nearly identical, we note that both claims arose out of the same incident, with the same mechanics of injury, seen by the same doctors, and represented by the same attorney and, therefore, there are a great deal of similarities. We also note that the appeal in both cases is also "nearly identical." The hearing officer gives as reason for his decision that he just plain did not believe the claimant's testimony.

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.). 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).

In that we are affirming the hearing officer's decision that the claimant has not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge