

APPEAL NO. 011113  
FILED JULY 05, 2001

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 May 7, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the respondent (carrier) timely disputed the compensability of the claimed injury, thus mooting the issue of the carrier's reopening the issue of the compensability of the claimed injury based on newly discovered evidence; that because the claimant did not sustain a compensable injury, he did not have disability; and that the claimant is not entitled to reimbursement of travel expenses for medical treatment from, or at the direction of, Dr. O, a chiropractor. The claimant has appealed on evidentiary grounds. The carrier urges in response the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in making the challenged determinations. The claimant testified that on \_\_\_\_\_, while working as an assembler of refrigeration cases, he was struck in the area of the right shoulder, neck, and upper back by a 12-foot refrigerator case heater pan unit, which was knocked out of a cart; and that he "did not hurt then" and he continued to work, including customary overtime, until January 3, 2001, when he commenced chiropractic treatment with Dr. O, who took him off work and has not released him to return to work. Mr. M, the line supervisor, stated that he was behind the claimant when the 130-pound heater pan unit "just glanced off [claimant's] shoulder." Dr. O's initial diagnosis of "contusion neck & shoulder" later expanded to "paravertebral polymyalgia Rotator Cuff Syndrome and multiple areas of subluxation complexes with Nerve entrapment, rule out herniated disc"; and Dr. R, who practices with Dr. O, commenced a series of injections. Dr. T, a chiropractor who reviewed the medical records for the carrier, reported on March 2, 2001, that Dr. O "predictably" took the claimant off work and referred him to Dr. R, who "predictably" commenced the injections; that there are no objective findings to substantiate the claimant's subjective symptoms; and that "there appears to be a trauma which appears to be so slight so as to possibly be unable to produce the alleged subjective complaints listed by the chiropractor."

The hearing officer clearly found unpersuasive the claimant's testimony and evidence, particularly his medical evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The carrier's Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) filed with the Texas Workers' Compensation Commission on March 5, 2001, sufficiently supports the challenged finding concerning the

timeliness of the carrier's dispute of the claimed injury. As for the disability and travel expense reimbursement findings, they are not only sufficiently supported by the evidence, but are also compelled by the determination that the claimant did not sustain a compensable injury. The Appeals Panel, an appellate reviewing tribunal, 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 decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

CONCUR IN THE RESULT:

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Gary L. Kilgore  
Appeals Judge