

APPEAL NO. 011473
FILED AUGUST 13, 2001

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 May 25, 2001. The hearing officer determined that the appellant (claimant) sustained a compensable injury "in the form of minor fractures to his right hand" on _____ (all dates are 2000 unless otherwise noted); that the compensable injury was not a producing cause of the claimant's "streptococcus infection and invasive cellulitis" (infection and cellulitis); and that the claimant did not have disability.

The claimant appeals, contending that his injury was more than a "minor fracture," that the compensable injury caused or aggravated the infection and cellulitis, and that he has had disability. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant was employed as a floor hand on a drilling rig. It is relatively undisputed that the claimant sustained some sort of scratch or laceration on his right hand at home on January 6. The claimant testified that on _____, while working on the drilling rig, a chain hit him on the back of his hand. Whether the claimant reported the incident to the driller (the supervisor) is disputed, but notice to the employer is not an issue. The claimant admitted that the chain incident did not break the skin. The claimant testified that he worked the next day, January 8, and was again hit on the right arm by the chain, and that he again told the driller about the incident. The claimant testified that his right hand/arm got progressively worse and that he sought medical attention at a neighborhood clinic (clinic) on January 11. X-rays of the right hand, taken on January 11, showed a marginal avulsion fracture of the second metacarpal and a tuft fracture of the distal phalanx of the ring finger. The claimant was subsequently hospitalized for the infection and cellulitis.

The clinic note of January 11 indicates a date of accident of January 9 and noted, an "infected wound." A consultation note by Dr. R recites the incident of "a blow to the dorsum of [claimant's] right hand" which "created an open wound." In a note dated April 4 Dr. R states that the claimant "sustained a blow to his right hand while at work, which resulted in a superficial laceration. This wound became infected with [infection and cellulitis] with necrotizing fasciitis."

The hearing officer found that the claimant did sustain an injury to his right hand which resulted in "a relatively insignificant fracture of the second metacarpal and . . . ring finger" consistent with the mechanism of the claimed injury, but that the infection and cellulitis were the result of an infection of the non-work related scratch or laceration. The hearing officer obviously believed that the claimant's disability (as defined in Section 401.011(16)) was the

result of the infection and cellulitis rather than the fractures. While the hearing officer could have found that the fractures contributed to the claimant's inability to obtain and retain employment at his preinjury wage, she did not do so.

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).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge