

APPEAL NO. 012382
FILED NOVEMBER 21, 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 (CCH) was held on September 7, 2001. With regard to the four issues before him, the hearing officer determined that (1) the appellant (claimant) had not sustained a compensable injury, (2) the date of the claimed injury was "on or before _____" (all dates are 2000 unless otherwise noted), (3) the claimant had not timely reported an injury to the employer and did not have good cause for failing to do so, and (4) because the claimant did not have a compensable injury, the claimant did not have disability. The hearing officer's determination of a _____ date of injury has not been appealed and has become final.

The claimant appeals the injury, notice, and disability issues, contending, among other things, that the hearing officer relied on medical evidence outside of the record and otherwise emphasized his interpretation of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a delivery person by the employer office equipment store. Much of the evidence is conflicting and in dispute. It appears undisputed that the claimant had been having back problems for a time prior to _____, as evidenced in an office note dated March 16 by Dr. E, the claimant's then doctor, and as evidenced from the claimant's supervisor, Mr. KL, and a coworker.

The claimant testified that on _____ he was helping Mr. KL and the coworker move a lateral filing cabinet when he felt a sharp low back pain. What the claimant told Mr. KL is in dispute. The claimant did see Dr. E again on _____, and Dr. E ordered an MRI, which showed some disc bulging at L2 through S1, "most pronounced at L4-5," and some other abnormalities. Dr. E's office notes do not recite an injury involving the filing cabinet. After missing a few days of work, the claimant returned to work and continued working until some time during the week of July 21. The claimant told the employer that he was going to the doctor on July 24, but the reason given is in dispute (the carrier presented some disputed testimony that the claimant hurt his back over the weekend while helping his father-in-law). The claimant went to a hospital emergency room (ER), and the ER record of July 25 indicates complaints of back pain for a month but no reference is made to any kind of lifting injury. The claimant subsequently saw Dr. S on July 28. Dr. S noted back pain "on awakening six days ago" and that the claimant "denies any injury" or "any previous history of similar disorder." Dr. S referred the claimant to Dr. H for epidural steroid injections. The claimant got off-work slips for two weeks from Dr. H on July 28 and again on August 16.

The employer's owner testified that she had paid the claimant for the time he had missed and that the claimant had asked for a further advance on his vacation time, which the employer denied on August 14. On August 18 the claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) (claiming a _____ date of injury) with the Texas Workers' Compensation Commission and on Monday August 21, the claimant wrote a note claiming a work injury and presented it to the employer. The employer asserts, and the hearing officer found, that August 21 was when the claimant first reported his injury to the employer. The claimant subsequently began seeing a chiropractor to whom he was referred by his attorney, and the chiropractor testified that the _____ incident caused the claimant's back injury. The claimant returned to work for a different employer on March 8, 2001.

Five witnesses testified at the CCH with conflicting testimony. The various medical reports were subject to different interpretations. The claimant in his appeal takes issue with a comment by the hearing officer in the Statement of the Evidence where the hearing officer states:

Although disc bulges can appear fairly quickly, both disc space narrowing and spinal canal stenosis take some time to form, as this Hearing Officer has learned from a lot of medical evidence over the past six years.

The claimant asserts that the hearing officer relied on "expert medical testimony outside the record" and that "the hearing officer became a medical expert without revealing his prior medical opinions . . . unanticipated by the claimant." We agree that the hearing officer erred in this comment; however, we do not find that comment to constitute reversible error in that other medical evidence, including DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th Edition of which the hearing officer announced he was taking official notice, supports the hearing officer's determination.

On the issue of notice, there was conflicting evidence presented at the hearing. The hearing officer resolves the conflicts and inconsistencies in the evidence 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 hearing officer's decision is supported by the evidence, and 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.

The true corporate name of the insurance carrier is **FEDERATED MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSS LARSEN
806 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge