

APPEAL NO. 012542
FILED NOVEMBER 27, 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 commenced on June 15, 2001, and concluded on August 23, 2001. At the initial hearing on June 15, 2001, it became clear that another worker who was represented by the same attorney representing the appellant (claimant) had been involved in the same incident and had been treated by the same doctors. At that time, it was decided to consolidate the cases as the evidence was the same or similar in both cases. One CCH was held, and the hearing officer wrote one decision involving both claimants but with separate docket numbers. We will, however, write separate decisions.

With regard to the issues before her, the hearing officer determined that the claimant did not sustain a compensable injury on _____, and therefore did not have disability.

The claimant, in a pro se appeal, contends that he did suffer an injury when he was shocked; that an MRI was objective evidence of the injury; and that he had disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The basic background facts are not greatly in dispute. The claimant and a coworker, claimant H, were cement finishers and were working at a power plant construction site on _____. The claimant was using a 20-foot long aluminum-handled broom while he was standing on a wet concrete pad when one end of the aluminum handle apparently came in contact with a "potential transformer" (transformer).¹ It is undisputed that when the aluminum broom handle came in contact with the transformer, there was an electrical explosion. It is further relatively undisputed that the electric current passed about half way through the broom handle when it came in contact with a steel support beam which was grounded and that neither the claimant nor claimant H were directly hit by the current.

The claimant's theory is that the electric current ran through the support beam into the grounding system beneath the wet concrete pad and that some of the electricity came back up through the wet concrete knocking the claimant and claimant H into a crouching position and causing electrical injury to both of them. There is some dispute whether claimant H was on the wet concrete pad or was standing beside it. There is also dispute about how much of the 138,000 volts had been dissipated elsewhere and whether the

¹ Although called a "potential transformer" the transformer carried 138,000 volts of electric current.

claimant had gone back to assist claimant H. The carrier's theory is that the electric current was grounded through the support beam to a "massive underground grounding grid" and that the claimant and claimant H sustained no injuries. It is undisputed that neither claimant sustained burn injuries.

Both the claimant and claimant H were taken to Dr. G, who noted an exposure to an electrical explosion, performed a physical examination and noted no injuries. The claimant and claimant H were released to return to work and did in fact return to work. The claimant subsequently began treating with Dr. P, a chiropractor, who, in a report dated November 20, 2000, noted "soreness over [claimant's] entire body" and began conservative care "to include EMS, hot pack" Dr. P in a Work Status Report (TWCC-73) released the claimant to return to work without restrictions. The claimant was subsequently laid off from work because his job was finished on December 14, 2000. Dr. P, in another TWCC-73, dated December 29, 2000, took the claimant off work effective December 15, 2000. MRIs of the lumbar and cervical spine were performed on December 11 and 12, 2000, with the cervical MRI showing a disc herniation at C4-5 and posterior bulging at C5-6. Dr. P referred the claimant to Dr. M, a medical doctor, who, in a December 5, 2000, report, had an impression of "exposed to an electrical injury. [Claimant] twisted his neck and back and has had complaints of neck and back pain since the accident." Dr. P, in a report of May 8, 2001, stated that the claimant "suffered a significant injury as documented by the MRI" when "huge amounts of electricity" coursed through his body. Dr. P stated that both claimants "suffered severe spinal injuries . . . secondary to huge amounts of dissipating electrical current."

The key point in this case is whether the electric current was actually grounded in the grounding grid or whether it coursed up through the wet cement injuring the claimant and claimant H. The carrier presented expert evidence through the employer's safety manager on how the electricity was dissipated. Both claimants relied on the MRI and doctors' reports.

The evidence was clearly in conflict on which theory was correct. The hearing officer adopted the carrier's theory that the electricity had entirely dissipated in the underground grid and the claimant and claimant H had not sustained any injury. 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.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge