

APPEAL NO. 020541
FILED APRIL 17, 2002

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 February 19, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant has appealed on evidentiary sufficiency grounds. The respondent (carrier) has filed a response urging the sufficiency of the evidence to support an affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while loading bolts into a heavy steel beam which was being erected, he saw black dots and passed out; that he was told at the hospital that he had a syncopal seizure due to abnormal brain activity; that he returned to work the next day but left early in pain; and that he was laid off the following day. In her recorded interview, the owner of the business stated that the claimant quit the job. The claimant further stated that he believes the beam shifted and pushed him backwards and over, causing him to fall on his back and injure himself; that no one said they saw the beam hit him; and that he just remembers seeing black dots before regaining consciousness. He said that he has been receiving treatment for his neck and back since October 4, 2001; that he was released by his doctor for light duty and is restricted from lifting more than 20 pounds and using stairs and ladders; and that he performed temporary work at two locations over the holidays and is trying to find work. He conceded that a physical performance test of February 2, 2002, determined that he could perform "very heavy" work. The October 4, 2001, report of Dr. W stated that orthostatic hypertension caused the claimant to faint after suddenly standing from a squatting position following heavy exertion and thus the syncope was related to his work. According to the medical records, the paramedics reported that the claimant had a seizure and an episode of low blood sugar. In his interview of November 12, 2001, the claimant told the adjuster he had not hurt anything in the fall. In his appeal the claimant asserts that he sustained strains to all three regions of his spine as well as his shoulders and the blow to the head.

The hearing officer found that the claimant had a fainting event while at work on _____; that this fainting event did not arise out of the claimant's work and was an ordinary disease of life unrelated to his employment; that the claimant was not injured as a result of the fainting event; and that he was not injured in the course and scope of his employment on _____, and did not have disability.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability

can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). 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.)). As an appellate reviewing tribunal, 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. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Terri Kay Oliver
Appeals Judge