

APPEAL NO. 020776
FILED MAY 15, 2002

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 March 18, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that the claimant did not have disability.

The claimant appealed, contending that evidence to the contrary to his testimony was not credible and that medical evidence supported his position that he had sustained a compensable injury and had disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant's testimony that he sustained a bilateral foot injury on _____, when he fell backward on his heels while carrying a heavy box is disputed by LB, the claimant's supervisor and the employer's general manager. LB testified that the claimant did not fall, that the claimant had complained of foot problems and was seen soaking his feet prior to _____, and that the claimant had filed a spite claim for being terminated on July 20, 2001. The claimant did seek medical treatment at a Veteran's Administration (VA) hospital on _____, but contemporary VA medical records only note "heel pain" which "is most painful when getting out of bed in the morning" with no reference to a fall or trauma. Two doctors testified that the claimant's bilateral plantar fasciitis/foot sprain, bilateral tibial tendinitis, and bursitis were caused by the fall but that the diagnosis was based on the history provided by the claimant.

The hearing officer commented that the claimant "was not credible," and that his testimony "was not persuasive." The claimant, in his appeal, complains that the reports of Dr. N, who first treated the claimant were not addressed. Dr. N was the doctor who treated the claimant at the VA clinic and in evidence are two handwritten letters dated October 5 and November 13, 2001, which state that the claimant did give a history of a fall and that the VA medical records "are generalized notes used at the VA," and he was in error "for leaving out specific details."

The evidence was in conflict. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness.

Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

To the extent that the claimant's appeal offers information for the first time on appeal (LB's coast guard status), the Appeals Panel does not normally consider information offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Regarding the claimant's contention that certain exhibits were admitted over his objection that they had not been timely exchanged, the hearing officer admitted those exhibits solely as impeachment evidence. Having reviewed those documents, we conclude that the exclusion of those documents would most likely not have resulted in a different decision. We review evidentiary rulings on an abuse-of-discretion standard. We find no reversible error. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

There was conflicting evidence presented on the issues. The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issues is not against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Philip F. O'Neill
Appeals Judge