

APPEAL NO. 020798
FILED MAY 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A combined contested case hearing was held on February 21, 2002. In docket number 1, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she does not have disability as a result of an alleged _____, injury; that the claimant did not timely notify the employer of a work-related injury on _____, pursuant to Section 409.001 and the respondent (carrier 1) is relieved of liability for this claim in accordance with Section 409.002; and that the claimant did not timely file a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the date of injury as required by Section 409.003 and good cause does not exist for failing to timely file a claim. The claimant appealed all of the above determinations on sufficiency grounds. Carrier 1 responded, urging affirmance. In docket number 2, the hearing officer determined that the claimant did not sustain a compensable injury on _____, and that she does not have disability. The claimant appealed on sufficiency grounds. The respondent (carrier 2) responded, urging affirmance.

DECISION

Affirmed.

THE _____, INJURY

The claimant testified that she sustained a compensable injury on _____, while she was up on a ladder stocking merchandise; that she twisted, causing severe pain in her low back; that she reported the incident immediately to her manager; that she missed periods of work due to her injury; and that she did not file a claim with the Commission until 2001 because she did not know she could. In evidence is a statement from her manager which indicates that he remembers the claimed injury, but he does not remember if it occurred before or after he started working with the claimant.

The claimant had the burden to prove that she sustained the claimed injury, that she timely reported the claimed injury pursuant to Section 409.001, that she timely filed her claim pursuant Section 409.003 or that she had good cause for failing to do so pursuant to Section 409.004, and that she had disability. 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. The same may also be said for the timely notice and timely claim issues. 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.).

We are satisfied that the evidence sufficiently supports the challenged determinations concerning the claimed 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.). 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. 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 _____, INJURY

The claimant testified that she sustained a compensable injury on _____, when she sat on a defective chair in the break room and was thrown to the ground, striking her hip and shoulder, and that she has been unable to work due to the injury since that date. Carrier 2 argued that no new injury occurred on _____. In support of its position, Carrier 2 pointed to the voluminous medical records in evidence which show that the claimant has been treating for the complained of symptoms for several years. The claimant argued that the _____, injury was an aggravation injury.

As stated earlier, the claimant had the burden to prove that she was injured in the course and scope of her employment and the hearing officer is the sole judge of the weight and credibility to be given to the evidence. There is conflicting evidence in this case. The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant did not sustain a compensable injury on appeal. Cain, supra.

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The true corporate name of insurance carrier 1 is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

The true corporate name of insurance carrier 2 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LN., SUITE 1600
DALLAS, TEXAS 75231.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge