

APPEAL NO. 021010
FILED JUNE 10, 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 April 4, 2002, the hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability as that term is defined in Section 401.011(16). The claimant has appealed these adverse determinations on the grounds of evidentiary insufficiency. He also asserts inadequacy of counsel. The respondent (carrier) contends in response that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Affirmed, as reformed.

We note at the outset that while the hearing officer's Decision and Order reflected the identity of the carrier as Travelers Indemnity Company of Illinois, Hearing Officer Exhibit No. 2 states that the carrier is Travelers Indemnity Company of Connecticut. The identity of the carrier was not the subject of a stipulation. Accordingly, we reform the Decision and Order to reflect the correct name of the carrier.

The claimant testified that on _____, while working at a restaurant as a waiter, he slipped in the kitchen area while carrying some trays and caught himself with an elbow over the side of a sink. He stated that the thick rubber floor mats in that area had been taken up early for cleaning despite the fact that it was a very busy time at the restaurant. The general manager testified to the contrary and said none of the several dishwashers and cooks saw the claimed incident nor had any indication that the claimant actually had the slip and fall he claimed. This witness also stated that the claimant's employment was terminated for a "no call/no show" event on January 1, 2002.

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.)), who can believe all or part or none of any witness's testimony (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, 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 claimant also asserts that his lawyer did not meet with him before the hearing, did not adequately prepare the claimant for his direct examination, and did not offer evidence of the claimant's second fall at work soon after the first. As was stated in Texas Workers' Compensation Commission Appeal No. 94660, decided July 7, 1994 (Unpublished), "[t]he reliance on an attorney to preserve a client's rights must be determined on an agency relationship," and the Texas Supreme Court has stated that "an attorney employed to prosecute a claim for workmen's compensation is the agent of the client, and his action or nonaction within the scope of his employment or agency is attributable to the client." Texas Employers Insurance Ass'n v. Wermeske, 162 Tex. 540, 349 S.W.2d 90, 95 (1961). As in Appeal No. 94660, *supra*, "[t]here is no evidence that the attorney acted deliberately to injure the client or was guilty of bad faith or fraud on the client" and "[u]nder these circumstances, this is a matter to be resolved between the claimant and his attorney." See Wermeske, *supra*, and Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994.

The decision and order of the hearing officer are affirmed, as reformed.

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

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge