

APPEAL NO. 021706
FILED AUGUST 23, 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 June 17, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability, as a result of his compensable injury, from _____, through the date of the hearing. In its appeal, the appellant (carrier) argues that those determinations are against the great weight of the evidence. Alternatively, the carrier argues that the claimant's injury is not compensable, as a matter of law, because it occurred while the claimant was walking. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

Injury and disability are questions of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993; Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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 of the weight and credibility that is to be given the evidence. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Indep. Sch. Dist. v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). When reviewing a hearing officer's decision for factual sufficiency, we will reverse the decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986). In challenging the hearing officer's injury and disability determinations, the carrier emphasizes the same factors it emphasized at the hearing, with particular emphasis being place on the surveillance videotape of the claimant and the inconsistency between his activities on the tape and the claimant's testimony about his abilities. The significance of those factors was a matter for the hearing officer, as the fact finder, to determine. Nothing in our review of the record reveals that the challenged determinations are so against the great weight as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the injury and disability determinations on appeal.

Finally, we find no merit in the carrier's assertion that the claimant's injury is not compensable, as a matter of law, based upon our decisions in Texas Workers' Compensation Commission Appeal No. 001590, decided August 24, 2000, and Texas Workers' Compensation Commission Appeal No. 990022, decided February 19, 1999, because it occurred while the claimant was "merely walking." A review of the hearing officer's decision demonstrates that he credited the claimant's testimony that he had to

twist and turn his body in order to get by his coworkers chair and that he injured his back while engaged in that activity. As the fact finder, the hearing officer was free to credit that testimony over the contrary testimony from the carrier's witnesses that the claimant simply had to walk by the chair. Based upon the hearing officer's resolution of that conflict in the evidence, we cannot agree with the carrier's assertion that Appeal Nos. 001590 and 990022 are controlling and compel reversal in this instance.

The hearing officer's decision and order are affirmed.

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

**HAROLD FISHER
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge