

APPEAL NO. 950201

Following a contested case hearing held in (city), Texas, on January 13, 1995, the hearing officer, (hearing officer), resolved the two disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on (date of injury), and has not had disability under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011(16) (1989 Act). The appeal asserts, in essence, the insufficiency of the evidence to support the dispositive findings while the respondent (carrier) asserts to the contrary.

DECISION

Affirmed.

Claimant testified that while at work on (date of injury), he was proceeding down an aisle with a cart picking up empty color-coded prescription pans in an area where employees were packing medications in "bubble-pack" envelopes; that he and his supervisor, (Ms. C), met in the aisle; that as they passed by each other Ms. C intentionally "assaulted" him by striking the left side of his head with the corner of a cardboard box she was carrying on her head; and that when he turned around Ms. C "showed a horse faced expression, turned red, laughed, and turned the corner." Claimant estimated that the box, which contained empty "bubble-packs," weighed approximately five ounces. Claimant said he did not fall or say "ouch" or anything; that he touched the area of his head and got blood on his fingertip and that he sustained a laceration approximately one-half inch in length; that he "went into shock" and stopped working for approximately five minutes; and that he told coworker (Ms. W) that he had been hit on the head with a box and asked her for an aspirin. Claimant also said that on (date) he reported the incident to employer's chief of security, (Mr. B), advising that he felt that Ms. A hit him on purpose. He further testified that he began to experience bilateral leg weakness, dizziness, tension, pain, headaches, blurred vision and mumbling speech; that he visited an emergency room (ER) on (date), and was next treated on April 8, 1994, by (Dr. A) who in August discharged him to seek care from another doctor.

Claimant also testified that he continued to work until February 20, 1994, the date he voluntarily terminated his employment, and that he was unable to work between February 20th and October 15, 1994, because of his injury. He conceded that Dr. A had indicated he could work despite his headaches.

Ms. W testified that claimant had come to her for an aspirin but said he did not mention being struck in the head with a box. Ms. C testified that while she recalled passing out "bubble-packs" on (date of injury) and lifting a box up high to clear a cart in the aisle, she did not encounter claimant nor hit his head with a box. She agreed that she was his supervisor and had intended to terminate his employment; she denied she was prejudiced against him. The carrier introduced numerous handwritten statements of coworkers all stating they did not see Ms. C hit claimant.

The ER doctor's report stated that claimant seems to exaggerate his symptoms and appears to be upset with his supervisor, and that his left scalp was without swelling, tenderness or abrasion. He was given Advil and discharged. Dr. A's April 8, 1994, report assessed "post-traumatic headaches, dizziness and personality changes secondary to his work-related injury of (date of injury)." Dr. A took claimant off work until his next appointment, May 6, 1994. Dr. A saw claimant again on June 6th and August 8th. Dr. A reported on the latter date that claimant has "been disabled from 2/20/94 until the present time," that he was last seen that date, and that Dr. A "recommended a second medical opinion and to the [sic] under the care of another physician since I do not have any further recommendations at this point."

Finding that on (date of injury), claimant was not hit in his head by a box his supervisor was carrying and that his inability to obtain and retain employment at his pre-injury wages was not due to a work-related injury, the hearing officer concluded that claimant did not sustain a compensable injury to any part of his body on that date and did not have disability. Both issues presented the hearing officer with questions of fact to resolve and it is the hearing officer who is the sole judge of the materiality, relevance, weight and credibility of the evidence. The evidence was clearly in conflict and as the finder of fact it was for the hearing officer to resolve the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so in this case.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge