

APPEAL NO. 950211

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was commenced on September 9, 1994, with a second session held on January 4, 1995, in (city), Texas. (hearing officer) presided as hearing officer. The issues at the CCH were injury, timely report of injury, disability and average weekly wage (AWW). The hearing officer found that the appellant (claimant herein) did not suffer a compensable injury, did not timely report his injury without good cause for not doing so, that the claimant did not have disability and that the claimant's AWW was \$48.50. The claimant appeals the decision of the hearing officer contending that he was not represented by counsel in violation of his civil rights, that he had insufficient time to prepare for the hearing, that he was unable to speak to the ombudsman, and that he had a witness who was never questioned. The respondent (carrier herein) replies that the claimant fails to state a proper grounds for appeal, that he failed to send a copy of the appeal to the carrier, that the claimant agreed to proceed with the assistance of the ombudsman, that the claimant had sufficient time to prepare in that the hearing was repeatedly rescheduled and that it was the claimant's responsibility to present witnesses favorable to him.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant testified that on (date of injury), lifting a case of chicken for the employer, a restaurant, he felt a pop in his back. The claimant testified that his supervisor witnessed the incident. The carrier contended that the claimant was not injured lifting the case of chicken, but in an automobile accident. The carrier contended that the claimant never complained to the employer of a work related injury until after he was terminated on February 2, 1993. Medical reports in evidence state that the claimant was injured in a motor vehicle accident and do not mention an on-the-job injury.

We have previously held that the Appeals Panel will not consider matters that were not raised at the CCH, but which are brought up for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92716, decided February 16, 1993; Texas Workers' Compensation Commission Appeal No. 941663, decided January 26, 1995. The claimant's argument that he was not represented by an attorney in violation of his civil rights is such an argument. At the CCH the hearing officer told the claimant he had the right to an attorney and the claimant stated that he desired to proceed with the assistance of the ombudsman. See Texas Workers' Compensation Commission Appeal No. 92195, decided July 1, 1992. The claimant has not preserved any error for our review regarding representation.

The claimant argued that he had insufficient time to prepare for the hearing. Again this matter was not raised at the CCH. The claimant, in fact, represented at the CCH that

he was prepared to go forward. The claimant made no request for a continuance. Further, this case had been reset a number of times because of difficulties in contacting the claimant or in his attending the CCH. Again, the claimant fails to preserve error, if any existed. This is also true of the claimant's contention that he was unable to speak to the ombudsman. Also, here again the claimant failed to ask for a continuance to consult with the ombudsman, but stated he was prepared to go forward with the hearing.

The claimant argued that his witness was never questioned. The existence of this witness or the need for this testimony was never raised at the CCH. The claimant did not attempt to call this witness, nor is there a request for a subpoena in the record. If the claimant desired testimony from this witness it was his responsibility to call the witness.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge