APPEAL NO. 950326

Following a contested case hearing held in (city), Texas, on January 27, 1995, the hearing officer, (hearing officer), resolved the two disputed issues by concluding that the respondent (claimant) injured his back and right foot in the course and scope of his employment on (date of injury), and that he has had disability beginning on November 1, 1994, and continuing through the date of the hearing. The appellant (carrier) has requested our review pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.202(a) (1989 Act). The carrier challenges the sufficiency of the evidence to support these conclusions, as well as the factual findings upon which they are based, contending that claimant did not suffer a back injury (the carrier had accepted the foot injury) and that he did not have disability as a result of the foot injury. Claimant did not file a response to the appeal.

DECISION

Affirmed.

Claimant, the sole witness, testified that on the date of his injury, (date of injury), he was carrying a car battery into the employer's mechanic's shop when he slipped on an oily substance and fell. He said that he landed on his backside and the battery landed on his right leg. He said he got up, hobbled into the office, and told the manager, (Mr. S), he was hurt. Mr. S's later statement to an adjuster recited that claimant had advised him of dropping the battery on his right foot but had not then or later complained of a back injury. Claimant stated that while in the office he took his boot off and his foot was turning purple and he conceded that his primary concern at that time and later at the emergency room (ER) was his right foot injury. He maintained however that he hurt all over. He also said that coworker (Mr. D), who was nearby talking on the telephone when he fell, turned around and asked him what had happened. Mr. D's later statement given to an adjuster stated his impression that claimant appeared to have hurt himself and to be "crawling down to the ground," as distinguished from slipping and falling, and that claimant said he dropped a battery on his foot. The carrier was apparently attempting to show that the claimant did not fall on his spine.

Claimant further testified that his wife drove him to the ER where he was seen and referred to an orthopedic specialist for his foot, and that he could not get an appointment with the orthopedist for several weeks. Claimant, who stated he had not previously had a back problem, also testified that two or three days later he felt he needed medical attention for his back because he was having trouble getting out of bed and experiencing intermittent numbness in his right leg. He said he went to a clinic on November 7th. The medical records reflect that at the clinic claimant was treated by (Dr. P) and (Dr. G). An Initial Medical Report from Dr. P, which reflects claimant's visit on November 7th, states findings of paravertebral muscle spasms in the lumbar spine, marked decrease in range of motion and the presence of paresthesia in his right leg, prescribes a course of physical therapy (PT), and states a guarded prognosis and the anticipated dates of claimant's return to either

limited or full time work as "undetermined." Dr. G's November 7th note took claimant off work. A lumbar spine CT evaluation of November 8th revealed a small central bulge of the disc at L4-5. Claimant indicated that the carrier would not pay for the prescribed PT and that after a Texas Workers' Compensation Commission benefit review officer issued an interlocutory order he began the PT.

Claimant said he was later seen by (Dr. B), an orthopedic surgeon, who also ordered PT. Dr. B's December 12th note took claimant off work until "1-3-95." Claimant testified that his ankle is now well but that his back still leaves him unable to work and that he is still receiving PT and has not yet been released by Dr. B to return to work.

We are satisfied the evidence sufficiently supports the challenged factual findings that claimant hurt his back as well as his right foot when he fell on (date of injury), and dropped a battery on his foot, that he reported the fall and injury to his employer within minutes, and that he has not been able to work since the date of his injury because of his injury. The two disputed issues presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence (Section 410.165(a)) and it was for the hearing officer, as the finder of fact, 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). As an appellate reviewing body we will not substitute our judgement for that of the hearing officer unless the challenged findings are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); 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

Tommy W. Lueders
Appeals Judge