

APPEAL NOS. 001072 AND 001226

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 held on April 18, 2000. The issues were:

As to Docket # _____

1. Does the compensable injury sustained by the Claimant on _____ extend to include an injury to the right knee and bilateral upper extremities?

As to Docket # _____

2. Did the Claimant sustain a compensable injury on _____?
3. Does the Claimant's injury sustained on _____ extend to include an injury to her hips, lower back and neck?
4. Did the Claimant have disability resulting from the injury sustained on _____ and if so, from what period?

With regard to those issues, the hearing officer determined that the claimant's compensable _____, injury (the _____ injury) extends to include an injury to the right knee and bilateral upper extremities. Regarding the _____ injury, the respondent (carrier) had accepted liability for a left knee, right shoulder, and neck injury and the hearing officer's determinations that those injuries included a right knee injury and bilateral upper extremities injury has not been appealed; has become final pursuant to Section 410.169; and will not be discussed further.

With reference to the _____, injury (the _____ injury), the hearing officer determined that the claimant sustained a compensable right knee injury "in the form of a right knee bruise" on _____; that the compensable injury did not extend to her hips, lower back, and neck; and that the claimant did not have disability resulting from the _____, injury. The claimant appeals, contending that the medical evidence and her testimony established that the hips, lower back, and neck are part of the compensable injury and that she had disability. The claimant's appeal also contends that the claimant sustained a more severe injury than "simply a knee bruise" in the _____ injury. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant had a number of workers' compensation claims, as well as at least two unrelated motor vehicle accidents, during the _____ to _____ time frame and the carrier contends that the claimed extent of injury conditions could be related to any of those incidents. The claimant was employed as a clerical assistant. Specifically, regarding the _____ injury, the claimant testified that, as she was walking out of an office, she moved to let a coworker pass; bent to tie her shoe; lost her balance; twisted; and hyperextended to break her fall, sustaining injuries to her hips, lower back, and neck. Two coworkers who witnessed, or at least heard the "thump" when the claimant's knee hit the desk, testified at the CCH. Regarding the specifics of exactly where everyone was, and specifically where or how the claimant's knee hit the desk, is subject to some variance. The claimant argues that those variances show that testimony is not credible. Both coworkers testified that immediately after the bump, the claimant sat in a chair; rubbed her right knee; and said she was okay.

The claimant saw her treating doctor, Dr. C, three days later on November 16, 1998. Dr. C took x-rays of the right wrist, right knee, and cervical and lumbar spine. Dr. C diagnosed cervical sprain/strain, wrist sprain/strain, and lumbar sprain/strain and took the claimant off work. In a report dated December 5, 1998, Dr. C recited that the claimant told him that she "stumbled into the corner of the desk causing injury to her right knee, right wrist, neck and lower back." The claimant testified that she lost about three months work (had disability) except for some half days worked in March 2000.

The hearing officer, in her Statement of the Evidence, on more than one occasion commented that the claimant's credibility was "under question" or "questionable" and went on to comment:

Carrier did not present evidence that the _____ incident could have be [sic] staged. Claimant's co-worker's testimony was found to be credible and by their own testimony it was noted that Claimant could have at least sustained a minor bruise to her right knee due to bumping it against a desk on _____.

The claimant's appeal contends that the medical evidence (Dr. C's reports) and her testimony established that the _____ compensable injury amounted to more than a knee bump or bruise and extended to certain other claimed injuries. The extent of injuries, to include a determination of exactly what happened, are factual determinations to be resolved by the hearing officer. 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 the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-

Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge