

APPEAL NOS. 001712
AND 001713

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 June 7, 2000. The respondent (claimant) filed separate claims for injuries he alleged he sustained on _____, and on _____. One CCH was held to resolve the disputed issues concerning both claims. The hearing officer determined that on _____, the claimant injured his head, right shoulder, and cervical area in the course and scope of his employment; that on _____, he injured his right ankle and low back in the course and scope of his employment; and that as a result of the _____, injury the claimant had disability beginning on November 8, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed; stated that the hearing officer mislabeled one finding of fact concerning the claimed _____, injury and two findings of fact concerning the claimed _____, injury as stipulations; contended that the hearing officer erred in admitting a written statement of a coworker because it was not timely exchanged; urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly unjust; and requested that the Appeals Panel reverse the decisions of the hearing officer and render decisions that the claimant was not injured in the course and scope of his employment and did not have disability. A response from the claimant to neither of the appeals has been received.

DECISION

We affirm.

The following are listed as stipulations entered into by the parties:

On _____, the Claimant sustained an injury to his head, right shoulder and cervical area, when a 2' x 4' struck him while he was taking out trash for Employer.

On _____, the Claimant sustained an injury to his right ankle and low back when a bumper column struck him while he was working for employer.

The inability of Claimant to obtain and retain employment at wages equivalent to the pre-injury wage from November 8, 1999, to the date this hearing was held on June 7, 2000, was the result of the injury Claimant sustained while working for Employer.

Clearly, those are findings of fact made by the hearing officer to resolve disputed issues and are not stipulations entered into by the parties. We reform each Decision and Order to indicate that they are findings of fact.

Over the objection of the carrier, the hearing officer admitted into evidence a written statement of a person the claimant said was working with him when he was injured on

_____. The claimant testified about difficulty locating the person who no longer worked for the employer and contended that he used due diligence in obtaining the statement when he did and that he provided the carrier a copy of the statement soon after he obtained it. In the statement of the evidence and discussion in her Decision and Order concerning the _____, injury; the hearing officer stated that the statement was of minimal value and that she would have reached the same result without the exhibit. Evidentiary rulings by a hearing officer on documents which are admitted or not admitted are generally viewed as being discretionary on the part of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94816, decided August 10, 1994. The standard of review on such evidentiary questions is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 93580, decided August 26, 1993. In determining whether there was an abuse of discretion, we look to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). To obtain reversal based upon an error in admitting or not admitting evidence, a party must first show that there was error in admitting or not admitting the document, and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 941414, decided December 6, 1994. The hearing officer did not err in admitting the statement. If she had erred in admitting the statement, it would not have been reversible error.

Each Decision and Order contains a statement of the evidence and discussion. Briefly, the claimant testified that on _____, he was taking trash out of a building and that a 2 x 4 fell and struck his head, neck, and shoulder. He said that on _____, he was cutting "rebar," reinforcing steel that was used to hold concrete bumpers in place, from concrete bumpers that are in parking lots for wheels of vehicles to go against when vehicles are parked; that the bumpers were not properly stacked; that a bumper fell on his right ankle; that he pulled back to avoid further injury and his back struck a truck; and that he injured his ankle and low back. The claimant stated that he saw a doctor on November 8, 1999; that the doctor took him off work; that he has not been released to return to work; and that he has not returned to work. Witnesses for the carrier testified that the claimant did not report either claimed injury until after he quit working for the employer on _____, and that records indicate that trash was not being removed on _____, and that "rebar" was not being cut from bumpers on _____.

The claimant was seen by Dr. B on November 8, 1999. In an Initial Medical Report (TWCC-61) Dr. B states that the claimant had an abrasion, bruise, and contusion on the right scalp; that they were resolving; that his diagnosis was closed head injury, post traumatic cephalgia, right shoulder strain with possible impingement, right shoulder abrasion/bruise/contusion, cervical strain, and thoracic strain; and that in all reasonable medical probability the conditions were related to the accident described by the claimant. Another TWCC-61 dated March 20, 2000, states that the claimant injured his right ankle and low back on _____, when a steel support hit his ankle and his back hit a truck. Records indicate that Dr. B took the claimant off work and has not been released to return to work.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer resolved the conflicts in the evidence in favor of the claimant. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations in each Decision and Order are not 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We modify each Decision and Order to indicate that the three "stipulations" set forth earlier in this decision are findings of fact. We affirm each decision and order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge