APPEAL NO. 011253
FILED JULY 17, 2001

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 May 1, 2001. The hearing officer resolved the disputed issues by determining the following:

1. The respondent (claimant) did sustain a compensable injury on _____;

2. The claimant timely notified the employer of a work related injury pursuant to Section 409.001, and that the appellant (carrier) is not relieved of liability for this claim;

3. The claimant did have disability;

4. The claimant's injury did not arise out of an act of a third person and was directed at the claimant as an employee or because of the employment, therefore, the carrier is not relieved of liability for this claim pursuant to Section 406.032; and,

5. The claimant's injury was not caused by the claimant's willful attempt to unlawfully injure another person and the carrier is not relieved of liability for compensation pursuant to Section 406.032(1)(B).

The carrier appeals the hearing officer's determinations. The claimant urges affirmance.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

Conclusion of Law No. 5 is reformed as follows:

"The claimant's injury did not arise out of an act of a third person [intended to injure the employee because of a personal reason] and was directed at the Claimant as an employee or because of the employment, therefore, the Carrier is not relieved of liability for this claim pursuant to Section 406.032[(1)(C)]."

We affirm the findings of facts and conclusions of law as reformed.

The evidence sufficiently supports the hearing officer's factual determinations. The claimant and his coworker testified at the CCH that a verbal argument developed between the claimant and his foreman, Mr. P, regarding job skills. Thereafter, the claimant and his coworker resigned from their employment, gathered their equipment and then proceeded to walk out of the employer's job site when Mr. P assaulted the claimant from behind as he was attempting to leave the building. The assault on the claimant resulted in a compensable injury to the claimant's hip and knee.

At the CCH, the parties stipulated that the claimant was an employee of the employer "at all times pertinent to this case." The hearing officer found that the physical confrontation between the claimant and Mr. P resulted from an argument as to how the painting work should be performed and did not arise out of a personal disagreement unrelated to the work activities; and, the physical confrontation was caused by Mr. P, who hit the claimant in the back as he was attempting to leave the job site.

Texas courts have held that once an employment relationship has been terminated, either by the resignation of the employee or by the employee being fired, an injury incurred at the job site or while leaving the job site subsequent to the termination is not an injury sustained in the course of employment within the meaning of the workers' compensation law. Ellison v. Trailite, Inc., 580 S.W.2d 614 (Tex. Civ. App.-Houston [14th Dist.] 1979, no writ). However, an exception occurs when the employee is required, or reasonably believes that he is required, to remain at or to return to the employer's premises for his final paycheck or to take care of some other duty incidental to the termination. INA of Texas v. Bryant, 686 S.W.2d 614 (Tex. 1985). Texas Workers' Compensation Commission Appeal No. 000538, decided May 8, 2000. The evidence sufficiently supports that the claimant's act of gathering his equipment and proceeding out of the job site was an incidental duty of terminating employment.

This was a classic credibility contest, and the hearing officer was exercising his discretion in evaluating the evidence. The 1989 Act 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 to the evidence (Section 410.165(a)). It is for the hearing officer 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). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order, as reformed herein, are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge