

APPEAL NO. 180794
FILED MAY 8, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 7, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue before him by deciding that the appellant (claimant) did not sustain a compensable injury on (date of injury). The claimant appealed, disputing the ALJ's determination. The respondent (carrier) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and rendered.

The claimant testified he could not recall the events of the date of injury, (date of injury). The claimant's employer, (Mr. H), testified that as he was talking to the claimant while they were smoking the claimant fell to the ground and struck the right side of his head on the pavement. Mr. H called for medical assistance and the claimant was taken via ambulance to the (ETMC) emergency room. EMS records in evidence reflect that EMS arrived at the scene at 11:55 a.m., and note the claimant was confused and had slurring of speech. Although the claimant was transported to ETMC he left prior to being treated there. He was immediately taken to (HHER) and subsequently discharged from that facility, according to discharge instructions with a time of 3:49 p.m. The claimant testified he returned to HHER around 8:00 p.m. on (date of injury), because blood was coming out of his right ear and he had been told by HHER staff earlier that day to come back if this happened. Records from HHER regarding this visit are in evidence and reflect that the claimant had been at HHER "several [hours] ago," and that the claimant noticed bloody discharge from his right ear approximately three hours before returning to HHER. Those records also note examination findings of a small contusion on his right eyebrow ridge, bloody discharge from his right ear, and a suggested right temporal bone fracture. The claimant was transferred from HHER to ETMC. Records from ETMC dated November 30, 2017, note cellulitis and abscess of the claimant's face and a skull fracture.

The ALJ stated the following in his discussion:

While it would not be uncommon for a fall to result in some type of damage or harm, EMS records do not indicate [the] [c]laimant had any visible abrasions, contusions, or bruising at the time he was transported to the hospital. The evidence presented fails to establish that [the] [c]laimant

sustained damage or harm to the physical structure of his body in the fall of (date of injury).

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *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).

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain, supra*.

Under the facts of this case the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. It is undisputed that the claimant struck the right side of his head on the pavement when he fell to the ground. Although the ALJ is correct in stating that the EMS records do not indicate the claimant had any visible abrasions, contusions, or bruising at the time he was transported to the hospital, medical records in evidence dated (date of injury), the date of injury, note examination findings of a small contusion on his right eyebrow ridge, bloody discharge from his right ear, and a suggested right temporal bone fracture. There was no evidence of an intervening injury. We reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and we render a new decision that the claimant did sustain a compensable injury on (date of injury).

The true corporate name of the insurance carrier is **OHIO SECURITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge