

APPEAL NO. 990154

Following a contested case hearing held on January 7, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. Claimant has appealed the dispositive findings and conclusions, urging, in essence, that his evidence should have carried the day. The respondent (carrier) contends, in response, that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Affirmed.

The parties stipulated that on _____ (all dates are in 1998 unless otherwise stated), claimant was the employee of (employer). Claimant testified that on that date, a Friday, he arrived at work at about 8:00 a.m. and began his assigned task of picking up varying lengths of telephone poles in the employer's yard and throwing them into a dumpster; that his brother, Mr. K, and cousin, Mr. J, were also performing this task, along with the supervisor, Mr. S; that when he threw a particular pole overhead into the dumpster, he hurt his arms, back, and legs; that he could not continue to work and had to sit down; and that when Mr. S came over and asked him what was wrong, he told him he had hurt himself and that Mr. S told him to just sit and rest. Claimant further testified that sometime later, the crew just drove off, leaving him, so he went home and went to bed in pain; and that the next day he tried to call Mr. S but that Mr. S would not answer the telephone. He said he received medical attention the next week from Dr. K, who took him off work and prescribed therapy, that his back remains sore and swollen, and that he has not since returned to work nor has he received workers' compensation income benefits. Claimant also stated that in June he had asked that his pay of \$7.50 per hour be raised and that on the day of his injury, his pay was raised from \$7.50 to \$8.00 per hour but he was unaware of the raise until someone brought his last paycheck to him a few weeks after his injury.

Mr. S testified that on _____, he had just returned to work from a two-week vacation; that at the outset of the shift, he distributed the paychecks to claimant and the crew; and that in June claimant had requested a raise from \$7.50 to \$8.00 per hour and was supposed to get it but that it was not reflected in the check he received that morning. He further stated that he, claimant, and other employees were clearing up the yard and tossing poles into a dumpster; that at around 8:30 a.m. to 9:00 a.m., claimant said the "F" word and walked over to his car; that about 15 minutes later, he went over to claimant and asked him what was wrong; that claimant was mad because he had not received the raise; and that he told claimant he would talk to the employer's owner, Mr. D, about the matter because claimant was supposed to have received the raise. Mr. S further stated that claimant did not say he was hurting or report having been injured that morning but just went home mad and that he, Mr. S, did not learn of the claimed injury until told by Mr. D that he

had received a letter from the (clinic). A handwritten statement of Mr. K states that he heard claimant report his injury to Mr. S.

Mr. D testified that on _____, he was at the shop reviewing job prints while the crew was in the yard disposing of poles before leaving for a job site, that he saw claimant sitting in a car and asked Mr. S about him, and that Mr. S advised that claimant was mad about not getting a raise. Mr. D further stated that claimant was given the raise in the next paycheck. He also said that he first learned of the claimed injury when he received a letter from the clinic on September 4th. A handwritten statement of Mr. J states that he witnessed claimant reporting his injury to Mr. D.

Dr. K's Initial Medical Report (TWCC-61), which reflected the visit date of September 1st, stated the history of claimant's working with a telephone pole and sustaining an injury to the neck, midback, low back, and both arms, and stated the diagnosis as sprains of the neck and thoracic and lumbar spinal regions. The report also indicated that claimant was prescribed medications, a cervical collar, a lumbar support, and ice packs, and that he was taken off work. The report of x-rays of the arms and spine reflected they were within normal limits. A November 18th report of an EMG evaluation for claimant's neck and low back reflected no electrical evidence of radiculopathy, entrapment, or neuropathy. The December 11th MRI report reflected dessication in the L5-S1 disc with a fissure in the posterior annulus but no evidence of herniation.

Claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence (St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, 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 could reasonably infer from the evidence that claimant left work on _____ because he was angry about not having received a pay raise and not because he had sustained an injury on the job. The hearing officer indicated in her discussion of the

evidence that she did not find claimant's evidence credible. Since we affirm the finding that claimant did not sustain an injury at work on _____, we also affirm the finding that he did not have disability since a finding of a compensable injury is a prerequisite for a finding of disability.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge