

APPEAL NO. 990393

Following a contested case hearing held on January 26, 1999, with the record closing on January 29, 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 finding that the respondent (claimant) injured her right knee on _____, while handling boxes of mail in the course and scope of her employment as an equipment specialist and that as a result of her compensable injury she has been unable to obtain and retain employment at wages equivalent to her preinjury wages from June 17 to September 7, 1998. The appellant (carrier) appeals these findings and the consequent conclusions, asserting that claimant blatantly "manipulated and fabricated" the history of her claimed injury after the carrier filed its Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21). Claimant's response states that by loss of ability to work overtime she has lost more than she has gained from her claim and she seeks our affirmance.

DECISION

Affirmed.

Claimant testified that she has worked for the employer for about four years; that she was promoted from data entry duties to equipment specialist; that on _____, while performing her mail processing duties, which she described as a fast-paced operation involving the lifting of boxes of mail from a table to a conveyor belt to be carried to a mail counting machine, a box broke and mail began dropping to the floor. She said that she turned and twisted her right knee in the process of trying to get the box back onto the table without losing more mail and that she heard the "pop" and felt pain; that she told her supervisor, Mr. P, about the incident but declined to make a report and continued to work because she did not think her knee injury was "too bad"; that the longer she stood and twisted and turned the knee, however, the worse it got, and that it began to swell; and that on June 16, 1998, she returned to Mr. P and told him her knee was worse and he then prepared a report and told her to see a doctor. She said she saw Dr. D that same day and he took her off work and treated her knee; that sometime in mid-August 1998, the carrier denied her claim and, because she had no money coming in and bills to pay, she asked Dr. D to release her to return her to work; that, initially, he would only allow her to work four hours per day, five days per week; and that on September 17, 1998, again at her request, Dr. D released her to return to full duty and that she worked full duty until October 20, 1998, when her appendix burst.

In her recorded statement of July 28, 1998, to the adjuster, claimant stated that about three days after starting her equipment specialist duties she noticed that her legs were bothering her; that the work involves twisting her body; that the pain started on or about _____; that she told Mr. P about her injury "around the 25th"; that coworkers saw her limping; that she had a stinging sensation just above her knee and also right above her buttocks and down to her right knee; that she initially self treated; that she later spoke again to Mr. P who gave her a form to complete; and that she then went to Dr. D. Dr. D's June

18, 1998, Initial Medical Report (TWCC-61) stated a diagnosis of sacroiliac joint dysfunction, knee sprain/strain, and swelling. Dr. D's narrative report of June 18, 1998, states that claimant reported twisting her knee at work on May 26, 1998, reporting it to her supervisor, and continuing to work; that she tried home remedies and sought medical attention only after the injury got worse.

The TWCC-61 of Dr. D introduced by the carrier reflects that claimant saw Dr. D on June 16, 1998, and Dr. D's recitation of the history of the injury is as follows: "patient stated she was loading machine with mail, after 4 hours of loading, her leg and hip started hurting and aching, which progressively got worse." A second TWCC-61 signed by Dr. D bore the same date and all the other information was the same as in the other TWCC-61 except the history which stated the following: "patient stated she was performing normal job duties when she twisted her knee, she reported it to her supervisor but continued to work, tried at home remedies, but the injury only got worse, she then sought medical treatment for injury." This TWCC-61 was introduced by claimant. Dr. D's report of August 17, 1998, returned claimant to light/modified duty at four hours per day from August 18 to September 18, 1998, and stated a number of restrictions. Dr. D's other work status reports had claimant off work from June 16 to August 18, 1998.

The Employer's First Report of Injury or Illness (TWCC-1) bearing the name of Mr. P and the date of June 16, 1998, states that claimant "started having pain in leg after starting new position/pain increased over following weeks." The Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), which claimant acknowledged signing on July 9, 1998, states that the injury occurred when she was loading high speed equipment with mail and when she turned to lift the trays of mail her knee popped and pain went up her leg into her hip and her knee swelled. The carrier introduced two copies of this exhibit. The carrier's TWCC-21 dated August 7, 1998, states that the carrier denies that an injury occurred in the course and scope of employment; that claimant has a preexisting condition, injury, or ordinary disease of life which has not been aggravated by her employment; that claimant's condition is due to standing and/or walking which are not injuries as defined in the 1989 Act; and that any disability is not due to a compensable injury.

Claimant stated on cross-examination that she told the interviewer about the mail falling from the box, trying to grab it, and twisting and hearing her right knee pop, and of the pain moving up her leg to her right hip area and said she gave the same history to Dr. D. Asked about the description of how the injury occurred stated in her TWCC-41 being in smaller handwriting and about the ink appearing darker than on other portions of the form, claimant denied making the entry later and stated that she had to write small to get it all in the small area on the form and that she has problems with her right thumb which affects her writing.

Claimant had the burden to prove that she sustained the claimed injury and that she 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 carrier's contentions at the hearing below and on appeal are that claimant contrived a new version of how her injury occurred after receiving the carrier's TWCC-21 with the defenses stated therein and then basically manufactured new evidence to support the version of how the injury occurred to which she testified at the hearing. We assume the carrier has in mind the statement in the TWCC-21 that mere standing and walking alone will not constitute a compensable injury and asserts that claimant then realized she needed some more specific mechanism of injury and came up with the version of the broken box of mail with mail falling and her twisting trying to prevent further spillage. In any event, claimant's credibility was for the hearing officer to weigh and he was made well aware by the carrier of its contentions concerning the inconsistencies in the evidence. The record provides us with no basis to disturb the hearing officer's factual determinations. The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge