

APPEAL NO. 991379

Following a contested case hearing held on June 1, 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 concluding that the respondent (claimant) sustained a compensable back injury on \_\_\_\_\_, and that he has had disability from July 21, 1998, until June 1, 1999. The appellant (carrier) has appealed these legal conclusions and several substantive factual findings on the basis of evidentiary insufficiency. Claimant's response urges that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

It was undisputed that on \_\_\_\_\_, a Friday, claimant worked as an electrician for (employer). Claimant testified that on that date, while walking across an unfinished parking lot at a job site carrying a 60-pound tool belt, extension cords, and drills, he stepped on a clump of loose dirt, his left foot twisted, and he fell backwards onto his buttocks. He said his left great toe hurt but he did not think he was injured and did not report his fall that day; that the next day, he realized he was injured because his back, left foot and great toe hurt very bad; that he stayed in bed that weekend; that he called and left a message for the employer on Sunday; that on Monday he called for Ms. C, the office manager, to report the injury but she was not in so he reported the injury to Mr. R who told him to see a doctor and use his "work insurance." In his recorded statement, Mr. R stated that claimant said he hurt his back over the weekend and did not say he was injured at work. In her recorded statement, Ms. C said that claimant called her on July 24, 1998, and stated that he had fallen at the job site.

Claimant further testified that he obtained an appointment with Dr. L but was not seen because he was told he needed to use workers' compensation insurance for a work-related injury; that he called and reported the injury to Ms. C on July 24, 1998; and that he was not able to obtain an appointment with Dr. S until August 5, 1998. Dr. S's August 5, 1998, report states a history of claimant's left knee giving out at work and his foot twisting and of having back pain the next day with radiation into the left leg. Dr. S diagnosed lumbar pain and gave claimant restrictions against lifting more than 20 pounds and against bending, sitting, squatting, and kneeling. Claimant stated that when he called the employer to report his restrictions, his employment was terminated. He further stated that he has not worked since then and cannot do the type of work he was doing when injured. He said he moved to another city and commenced treatment with Dr. E. Dr. E's October 5, 1998, report states the impression as sprained left ankle at the time of the injury as well as a lumbar sprain and/or possible disc herniation. Dr. E further reported in that report, and again on November 24, 1998, that claimant was unable to return to work at that time. The October 29, 1998, report of a lumbar spine MRI ordered by Dr. E, which reflects that claimant was then 33 years of age, states the impression as a subtle posterior protrusion at L1-2, moderate herniation at L5-S1, and mild facetar arthrosis at L4-5. Claimant said he

later changed doctors to Dr. J and that both Dr. E and Dr. J have told him he will require back surgery. Dr. J's Initial Medical Report (TWCC-61) dated April 8, 1999, states the diagnosis as L5-S1 herniated disc, S-1 radiculopathy on the left, and second degree ankle sprain on the left. The report also reflects the dates of claimant's return to limited or full-time work as "unknown" and Dr. J's July 15, 1999, record states that claimant is off work until further notice. Both Dr. E's and Dr. J's histories of the injury refer to claimant's stepping into a hole while carrying electrical cable on \_\_\_\_\_.

The carrier has challenged findings that on \_\_\_\_\_, claimant was walking on the job site of the employer when he slipped and fell, injuring the lower part of his back; that his walking on the job site was an activity that furthered the business affairs of the employer; that he has been unable to work at full duty in his capacity as an electrician because of the \_\_\_\_\_, back injury; and that his back injury caused claimant to be unable to obtain and retain employment at wages he earned before \_\_\_\_\_, from July 21, 1998, and continuing to June 1, 1999, the date of the hearing.

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 decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge