

APPEAL NO. 991595

Following a contested case hearing held on July 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 determining that the appellant/cross-respondent (claimant) sustained a compensable injury on _____, to her thoracic and lumbar spine and that she did not have disability resulting from that injury. Claimant has requested our review of the disability determination while the respondent/cross-appellant (carrier) has requested review of the injury determination, both parties asserting, in effect, the insufficiency of the evidence to support those determinations. The carrier filed a response to claimant's appeal. The file does not contain a response from claimant to the carrier's appeal.

DECISION

Affirmed.

The hearing officer's decision contains a detailed statement of the evidence with which neither party takes issue. Accordingly, this decision will recite only so much of the evidence as is necessary for the decision. Claimant testified that on _____, while working for the employer as a tool room attendant, she injured her back lifting a bevel machine requested by a coworker which she estimated to weigh between 50 and 60 pounds. She said she felt immediate pain in her low back which radiated down her right leg and up into her thoracic spine region. Claimant further stated that the lifting incident was unwitnessed as far as she knew but that a coworker, Mr. L, came around the corner and helped her off the floor and into a chair. In his recorded statement, Mr. L stated that on that day, he went to the tool room and claimant told him she hurt her back picking up a bevel machine. Claimant further testified that she also told foreman Mr. H about her injury and that he accompanied her to the gate when she went home early. She said that the next day, she was assigned to work light duty in an office by job superintendent Mr. J; that the following day, she was reassigned to the tool room but with instructions not to do any heavy lifting and that she had the employees get the heavy tools they requested; and that she has not been able to do any heavy lifting since the accident. Both Mr. H and Mr. J in their recorded statements mention claimant's having a sore back at work on or about _____. Claimant further testified that she told the safety manager, Mr. B, about the injury and asked him about seeing a doctor.

Claimant conceded that her employment and that of coworker Mr. R were terminated by Mr. B on February 16, 1999, for having engaged the previous day in what she characterized as horseplay but which included his knocking off her hard hat and her throwing a wrench at him. Mr. B testified that on _____, claimant told him she did not know what she had done to her back but that it was stiff and sore. He further stated that as claimant was getting into her car after her employment was terminated, she threatened to file a claim for her back injury. He acknowledged that before her employment was terminated, claimant asked what to do about her back if it bothered her later. Claimant also

acknowledged having been involved in an altercation with Mr. R at his house on January 16, 1999, at which time she kicked in the door of his truck and bruised her arm on the truck but denied that he shoved her down the front steps.

Claimant further testified that she began to receive treatment for her back injury from Dr. G after the termination of her employment. Dr. G's report of her February 17, 1999, visit states the diagnosis as lumbar radiculopathy, rule out lumbar disc herniation, and thoracic sprain and strain. In evidence is a slip from Dr. G recommending that claimant be excused from work from February 16 to March 2, 1999; Dr. G's slip dated April 12, 1999, recommends that claimant be excused from work until May 10, 1999. Claimant said that Dr. G has not treated her for some time because he is not getting paid; that Dr. G took her off work completely on May 10, 1999; and that Dr. G has not released her from his care. She further stated that on May 14, 1999, she began working as a waitress on an "as needed" basis but works fewer hours and at less pay than she was earning in her job with the employer.

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. 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 sets out in her discussion the evidence that persuaded her that claimant sustained the claimed injury. As for disability, the hearing officer states in her discussion that claimant was improving before her employment was terminated, that she did not seek medical treatment until after her employment was terminated, and that although Dr. G took her off work and requested testing, claimant was performing her job and was seen running and throwing during her incident with Mr. R. The hearing officer concluded from the evidence that "claimant did not establish that she was unable to work from the compensable injury from February 24, 1999, through the date of the hearing." We

are satisfied that the evidence sufficiently supports the challenged findings and conclusions.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge