APPEAL NO. 991622

Following a contested case hearing held on July 9, 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 Injury day 1 or injury day 2, and that he did not have disability resulting from the claimed injury of Injury day 1 or injury day 2. Claimant has requested our review, contending that the evidence he adduced at the hearing met his burden of proof. The respondent (carrier) has replied and urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

Claimant testified that he commenced working for (employer) in September 1998; that on Injury day 1 (all subsequent dates are in 1999 unless otherwise stated), while working as an installer on the clubhouse of a new condominium project, his ladder slipped as he was descending it and he fell off, landing on and injuring his right knee. He stated that although his Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated March 26th and his notice of injury letter dated March 27th to employer vice president Mr. F stated the date of injury as "injury day 2," he later learned that the employer was not working on the condo project on that date and so changed the date of injury to Injury day 1. Claimant said he mentioned the injury to a supervisor, Mr. C, and to Mr. H, his supervisor, and added that he did not think his injury was serious and continued working. Statements from Mr. C and the testimony of Mr. H did not support claimant's testimony, indicating that he neither mentioned being injured nor gave an indication that he was injured. Claimant further stated that on March 18th he slipped on a roof tile and further injured his knee and that his employment was terminated on March 22nd for inadequate productivity. Claimant conceded that he did not advise the employer that his knee injury caused his reduced performance and that he did not bring up the knee injury during the meeting when he was informed that his employment was terminated. He further stated that on March 10th he saw Dr. M, who had previously treated his bursitis; that on March 23rd he began seeing Dr. G; and that on July 7th he underwent surgery on his right knee for a torn meniscus.

Dr. M's March 10th record states in part, "F/U [right] knee pain - reinjured knee on injury day 2, fell off ladder." Dr. G's March 23rd record states in part: "I definitely feel that this is a work related injury based on his history and the location of his injury." Dr. G's March 23rd record states the right knee diagnosis as partial ACL tear and medial and lateral meniscal tears. Dr. G again stated his belief that the injury was work related and took claimant off work.

The hearing officer's discussion of the evidence indicates that he was troubled by the inconsistencies in claimant's evidence and its conflicts with other evidence and that he

was simply not persuaded that claimant's evidence met his burden of proof. 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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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge