APPEAL NO. 992057

Following a contested case hearing held on August 24, 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 respondent (claimant) sustained a compensable injury on _____; that claimant provided timely notice of injury to the employer; and that claimant had disability beginning February 8, 1999, and continuing through the date of the hearing. The appellant (carrier) has requested our review of the hearing officer's determinations of the injury and disability issues, asserting the insufficiency of the evidence to support them. The file does not contain a response from claimant.

DECISION

Affirmed.

Claimant testified through a Spanish-language translator that when his shift ended at noon on _____ (all dates are in 1999 unless otherwise stated), he jumped down off the crane he operated that morning and twisted his right ankle; that he had some immediate pain which was not too bad, walked to his truck limping slightly, and drove home; that his pain increased as he drove home; that his wife applied ice and heat at home; that the next morning his pain was so bad he went to a hospital emergency room (ER) where he was diagnosed with a broken bone in his ankle; and that he went to the employer on Monday morning and asked coworker Mr. R, who spoke English, to report the injury to the employer.

Mr. R testified that he saw claimant walk from the crane to the yard on the alleged injury date and that claimant did not appear to limp nor did he mention having been injured. Assistant manager Mr. B testified that claimant, whom he described as a good and longtime employee, was not limping and did not appear to be in pain when walking to his truck at the end of the shift on _____. He also said that on February 8th, Mr. R told him that claimant said it had happened "away from here." Another coworker, Mr. S, said he heard that claimant received the injury elsewhere breaking up a fight; that some guy fell on the ankle, breaking it. These statements were, of course, rank hearsay.

The ER records state the history as "jumped off machinery 3 ft - Sat - @work - rt ankle injury and hurt right leg at work," reflect the impression as fracture of right fibula, and indicate that claimant's ankle was splinted and he was provided with medication and crutches and released. Dr. S's February 10th report states that claimant presents with a history of falling at work, injuring the right ankle; that the x-rays show a nondisplaced right malleolar fracture with a small medial malleolar fragment; that claimant has been in a splint; and that claimant will be put in a short leg cast and will probably be off work for about six weeks.

The February 11th disability certificate of Dr. S states that claimant was evaluated on that date and will be off work for at least six weeks. Dr. S's March 10th and April 7th certificates state that claimant is totally incapacitated and each have him off work for another four weeks. Claimant said that he is still receiving treatment, including exercises, that Dr. S has not released him to return to work, and that he expects to be able to return to work in December.

The carrier disputes findings that claimant sustained an injury while within the course and scope of employment on _____ and that due to the claimed injury claimant was unable "to obtain or [sic] retain employment" at his preinjury wage equivalent beginning on February 8th and continuing through 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.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge