APPEAL NO. 000016

Following a contested case hearing held on November 17, 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 appellant (claimant) did not injure his back on _____, while moving 50-pound crates of chicken and by concluding that claimant did not sustain a compensable injury on that date. The hearing officer also determined that claimant did not have disability. Claimant has requested our review of these findings and conclusions, asserting that they are against the great weight of the evidence. In its response, the respondent (carrier) urges the sufficiency of the evidence to support the challenged findings and conclusions.

DECISION

Affirmed.

Claimant testified that on _____ (all dates are in 1999 unless otherwise stated), while employed as an assistant manager of (employer), he injured his low back. He said that while he was cleaning the floor of the walk-in cooler, he moved three 50-pound crates of chicken and felt a burning sensation in his low back. Claimant stated that he finished his shift, called his general manager, Mr. B, and told him about the injury, and went home; that the next day, he went to a hospital emergency room (ER) with symptoms of chest pain and with the burning sensation in his low back; that the ER staff was more concerned with his chest pain and diabetes; that he told the doctor three or four times about his low back burning getting worse and that he hurt his back at work; and that he was diagnosed with gastritis and sent home. He said that he returned to the hospital on July 2nd and was released on July 3rd and that he again complained at the hospital about his back pain. Claimant stated that he cannot explain why there is no mention in the hospital records of his complaints of back pain and the history of injuring his back at work. A hospital record reflects that claimant was admitted on July 2nd and was discharged on July 3rd with the diagnosis of viral gastroenteritis and poorly-controlled diabetes mellitus. The record does not mention complaint of back pain. Claimant also said he had not previously had problems with his back. He later acknowledged that his upper back, but not his low back, was injured in an automobile accident six years earlier.

Claimant further testified that in addition to notifying Mr. B about his injury, he also called another general manager, Ms. T, on July 12th and advised her of his injury. He also said he began drawing short-term disability benefits at that time because he had no income and that Dr. T, his family doctor, was paid by his group health insurance. Although there was substantial testimony relating to claimant's notifying Mr. B and Ms. T of the injury, the provision of timely notice of the injury to the employer was not in issue. Mr. B testified that claimant's fiancée and his former wife both called him several times on July 1st about claimant's going to the hospital with chest pains but neither mentioned a back injury. Claimant said he has not worked since June 30th and that the employer stopped paying

him shortly after that date. An August 5th note of Dr. R returns claimant to work for the reason that he has been noncompliant with treatment.

Claimant further testified that on July 9th, he saw Dr. T for his back pain and told Dr. T he had hurt his back at work. He said that Dr. T just punched him in the left low back, causing him to jump off the examining table, told him he had pulled a muscle, and gave him pain pills. Dr. T's July 9th record states the impression as muscle spasm and does not mention an injury at work. Claimant said that after leaving Dr. T's office, he saw the office of Dr. Rodriguez (Dr. R), a chiropractor, a few blocks away and decided to go in and see Dr. R because he still had the burning sensation. He said he was seen by Dr. R who told him he had a disc problem and who commenced treatment; that, not improving, he changed treating doctors to Dr. VB, also a chiropractor; and that Dr. VB then referred him to Dr. H for epidural steroid injections. Dr. R's Initial Medical Report (TWCC-61) recites the history of claimant's lifting a box of frozen food at work and feeling pain in his back. The August 12th report of the MRI ordered by Dr. VB states the impression as a 2-mm diffuse bulge at the L4-5 level. Dr. VB wrote on September 27th that his diagnosis is "Lumbar IVD W Radiculopathy"; that claimant was apparently lifting cases of chicken when he developed burning pain in his back and down both legs; and that, given the sudden onset of symptoms after the work-related incident, "there can be no doubt that his current disability is a direct result of the aforementioned accident."

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:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge