

APPEAL NO. 000265

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 10, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____; and whether he had disability and, if so, for what periods. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and because there was no compensable injury, there was no disability. The claimant appeals, contending that his testimony about his fall at work, which was accepted by his doctors, established that he did in fact fall at work and injure his back and that the determinations of the hearing officer are against the great weight of the evidence. The respondent (carrier) urges in response that the evidence in the record is sufficient to support the challenged findings and conclusions of the hearing officer.

DECISION

Affirmed.

Claimant testified that while working as a pipefitter making air lines with pipes for the employer at a job site in (state) on _____, he tripped over some debris and rebar while carrying a heavy piece of pipe and fell at about 3:00 p.m.; that he got up, was embarrassed, did not notice any witnesses to the incident, and went over to the break shack where he reported the fall to the project's safety man and time keeper, Mr. L. Claimant said that Mr. L was taking inventory at the time and said he would make a note of it. He stated that he felt pain in his back but figured he would work it off; he finished his shift at 5:30 p.m., and rode home with his brother-in-law, Mr. B. He said he later became ill, began vomiting, and was taken to a hospital where he underwent an emergency appendectomy for an acute gangrenous appendix on (date). Claimant stated that he complained of his back pain as well as his abdominal pain at the hospital; that his back "is still messed up" and his right leg sometimes feels like it is "on fire"; that he takes lots of pain pills; and that he see Dr. L, a chiropractor, twice a week.

Mr. B testified that he worked with a welder during that shift but did see claimant, from a distance of about 40 yards, fall down, get up, and stumble. He said that while they were together on break, claimant said his stomach hurt and that his back also hurt. Asked about information that he, too, claimed an injury on _____, Mr. B stated that he had pulled a muscle on either the day before or day after claimant's injury but not on the same day.

Mr. S, the president of the employer company, testified that he learned of claimant's injury from Mr. L who had taken a call from Mr. B reporting his own injury and that it "bothered" Mr. L, who investigated the claim, that both claimant and Mr. B were reporting injuries on the same date and that Mr. L felt both were bogus.

Mr. J, the employer's project manager, testified that Mr. L advised that when claimant and Mr. B left the work site together on _____, they did not report having been injured; that a number of persons at work at the job site that day were interviewed and none knew anything about claimant's alleged back injury; and that Mr. L first learned of the claimed injury when claimant's wife called about his check. Mr. J also testified that he talked to one of claimant's surgeons, Dr. C, and that he could not recall claimant's having complained of a back injury before August 8, 1999.

Claimant introduced the August 20, 1999, statement of Dr. C stating that it is his medical opinion that claimant is unable to work due to a work-related accident on _____, and that the accident caused him to injure his lower back and lower abdomen. Dr. C's August 16, 1999, statement said that the severe ileus of the small bowel, developed after surgery, was probably due to the injury to the lower abdomen claimant sustained on _____. The carrier introduced the report of Dr. O who reviewed claimant's medical records and opined that neither the gangrenous appendicitis nor the small bowel ileus which developed after the appendectomy resulted from claimant's fall at work. He said that in all probability, these conditions were not related to a fall but were coincidental.

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 makes clear in his discussion of the evidence that he had concern with various inconsistencies in claimant's evidence and did not find it persuasive. 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

Judy L. Stephens
Appeals Judge