

APPEAL NO. 000475

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 February 3, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to his right shoulder, right arm, neck, and low back on _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury to his right shoulder, right arm, neck and low back on _____, and that since there was no injury, there was no disability. The claimant appeals, requesting that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that claimant did not sustain a compensable injury to his left arm on _____. Claimant testified that he began his employment with the employer, a newspaper publishing company, on or about May 10, 1999, and worked in the packaging department; that on _____, about three hours into his shift, he injured his right biceps muscle while lifting and pushing on 50-pound bundles of newspapers; that he was seen at (hospital) where he advised the attending personnel that he had injured his right biceps; that an ice pack was applied to his right arm; that no testing was done on that extremity; and that he later developed pain in his neck, right shoulder, and low back and commenced chiropractic treatment with Dr. K. Claimant further testified that on June 10, 1999, he was arrested on a concealed weapon charge and incarcerated for 23 days; that he was not injured while in jail; and that he had previously, in 1997, served a one-year sentence in another state for a check theft offense.

The hospital records of _____, reflect that claimant complained of left arm pain consequent to straining it at work, had no back pain or other complaints, and was diagnosed with left elbow pain secondary to biceps muscle strain. Claimant contended that he complained of right arm pain and that his complaint was misrecorded by the hospital personnel. A June 28, 1999, record entitled "Correctional Health Clinic Notes" states that claimant's right shoulder pain is better and that he has no complaints except for left ear pain.

Dr. K's August 9, 1999, report of claimant's initial visit on August 5, 1999, states the diagnosis as cervicocranial syndrome, cervical myofascitis, thoracic sprain/strain with myotonic paresis, and lumbosacral sprain/strain.

In addition to the dispositive legal conclusions, claimant challenges the hearing officer's factual findings that claimant did not injure his right shoulder, right arm, neck and low back while in the performance of his work duties for his employer and that from June 10, 1999, through the date of the hearing claimant's inability to obtain and retain

employment at his preinjury wage rate was not due to a claimed work-related injury of _____.

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 her discussion of the evidence that she did not find claimant's testimony credible. 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