APPEAL NO. 000567

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 4, 2000. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. Claimant requests our review of these determinations for sufficiency of the evidence, asking that we reverse the hearing officer=s decision and render a decision in his favor. The respondent (carrier) responds that the evidence is sufficient and urges our affirmance.

DECISION

Affirmed.

Claimant testified that on _____ (all dates are in 1999 unless otherwise stated), while working as a counter salesperson at an auto parts store, he went to the rear of the store to obtain a part for a customer and that as he was returning to the counter area, he passed through swinging doors and walked on a wooden ramp and his foot "planted" on the non-slip surface of the ramp and his left knee locked and did not turn. He said he felt immediate pain in his left knee but completed his shift and went home; that his knee locked again while he was getting into the shower that evening but he had no additional pain; that he worked all the next day with pain and mild swelling; and that on August 5th, he went to an emergency room (ER) and was diagnosed with a torn meniscus. Claimant said that although only he and the store manager, Mr. R, a personal friend, worked at the store, he did not report the injury to Mr. R but rather took the ER "paperwork" about being off work to another parts store and gave it to Ms. S.

Ms. W, the adjuster, testified that she was advised by Dr. P office on the day of the hearing that claimant was released to return to his regular work as of January 4, 2000.

Mr. R testified that the ramp does not have any anti-slip material on its surface and that when claimant worked on August 3rd and 4th he never complained of a left knee injury or gave the appearance of favoring that knee. Mr. R further stated that claimant participated in a team pool tournament after work on August 4th and again did not complain about his left knee or give the appearance of favoring it. Mr. R also stated that he learned that claimant was alleging an on-the-job injury from Ms. S and that although they are friends, he does not believe claimant on this matter.

Ms. S testified that claimant came in to her store on August 6th with an off-work slip and said his knee needs to be repaired. She said she asked claimant if his knee was hurt at work and he replied that it was not but that the knee needs to be repaired.

Ms. H, who co-owns with her husband the store where claimant works, testified that she talked to claimant about the paperwork for a workers= compensation claim. She said that when she asked him if the injury was job related, claimant responded, "no," so she told him to contact the employer=s group health carrier.

Claimant later stated that the wood ramp floor has a fine grade sand finish which caused his foot to plant and his knee to lock. However, co-owner Mr. H stated that the floor does not have such a finish or covering.

During the closing arguments, the carrier stressed the inconsistencies in claimant=s evidence. Claimant, in rebuttal, pointed to the consistency of the history of the injury in the medical records.

Dr. F, who treated claimant in the ER, wrote on November 27th that claimant reported that prior to the claimed injury his knee would lock up but that he had no serious problem with it and that "[t]he walking on a ramp at inclination and stepping off caused his knee to twist which swelled according to his history."

Dr. P=s initial report of August 9th stated that claimant was carrying an alternator when he walked through double doors and that "[t]here is a ramp with a sticky surface on it and to prevent his slipping, his left foot planted and caught and he twisted the knee and felt a pop." Dr. P=s records reflect that on August 9th he took claimant off work and that on August 31st he performed arthroscopic surgery to repair the anterior horn tear of the medial meniscus in the left knee. Dr. P=s letter of December 6th to the adjuster states that while he has no way of knowing whether claimant injured his knee at work as he reported in the medical history, claimant has told two of Dr. P=s office employees that this occurred outside of work.

According to a document the carrier obtained from the Texas Workers= Compensation Commission, since 1988 claimant has had four previous claims with four different employers.

In addition to the dispositive legal conclusions, claimant disputes the hearing officer=s factual findings that claimant did not injure his left knee at the employer=s workplace on _____ and that his inability to obtain and retain employment at wages equivalent to his preinjury wages since _____ is because of something other than a work place injury.

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.). The hearing officer makes clear in his discussion of the evidence that he did not find claimant's evidence persuasive. 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

Judy L. Stephens
Appeals Judge