

APPEAL NO. 000710

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on March 17, 2000. The hearing officer determined that the date of the alleged injury is _____; that the appellant (claimant) did not sustain a compensable injury on _____, _____, or any other relevant date; and that claimant has not had disability. Claimant has requested our review for evidentiary sufficiency of the injury and disability determinations. The respondent (self-insured) urges, in response, that the evidence is sufficient to support the challenged conclusions and findings.

DECISION

Affirmed.

Claimant testified that he commenced employment with (employer) on _____ (all dates are in 1999 unless otherwise stated), and that he was injured at work on _____ when he lifted a box of produce, turned his body, tripped over some straps, and fell forward onto his knees, attempting to break his fall with his right hand. Claimant said he reported his injury that day to his supervisor, Mr. H, and went to a clinic where he was given some pills and told to return to work the next day; that, initially, his left knee hurt but that his right knee began to hurt two to three days later; that he started treating with Dr. R, a chiropractor to whom he was referred by an employee of Dr. R; and that he has been unable to work since _____ due to his injuries. Claimant conceded that he was not a citizen of the United States; that he gave the employer a false social security card at the time of his employment; and that the employer terminated his employment. He denied knowing that in the week or so before his claimed injury the employer terminated the employment of four coworkers who also worked in the employer's produce distribution division for being undocumented aliens.

Mr. J, the personnel manager at the employer's distribution center, testified that, according to the employer's payroll records, claimant's first day of employment was September 9th and his last was September 18th; that two of the four employees whose employment was terminated in the September 13th through 17th period worked in the same division as claimant; and that, in his experience, the news of employment terminations spreads quickly among coworkers.

Claimant does not dispute the determination that the date of his claimed injury is _____, the date to which he testified. However, in addition to the dispositive legal conclusions concerning the injury and disability issues, he challenges findings that his testimony was not persuasive in view of its conflict with the statement of Mr. H, the employer's payroll records, and claimant's indicating only a left knee injury on the Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) which he signed. Claimant also disputes factual findings that the evidence is insufficient to conclude that his knee condition is related to his work rather than to something that may have happened outside

of work; that claimant did not sustain an injury at work for the employer on _____ or _____, or on any other relevant date; and that claimant has not been unable to obtain and retain employment at his preinjury wages because of a compensable 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.)). 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:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge