

## APPEAL NO. 001026

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 April 20, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. The claimant has requested our review of these determinations for evidentiary sufficiency. The respondent (carrier) contends that the evidence is sufficient to support the disputed findings and conclusions.

### DECISION

Affirmed.

Claimant testified that at about 9:00 a.m. on \_\_\_\_\_, while working for the employer as a maintenance mechanic trainee, employment he commenced in June 1999, he slipped from the third or fourth rung of a ladder he was climbing while carrying a clipboard in his right hand and fell to the floor onto his buttocks. He said his low back and right leg were immediately painful but that after reporting the injury to his immediate supervisor, Mr. W, he continued to work his 7:00 a.m. to 3:00 p.m. shift; that a few days later he began to have neck pain; and that he is claiming that his back and neck were injured in the fall, but not his tailbone. Claimant further stated that although the area where he fell is dusty, it is not as dusty as other areas and that at lunchtime on the day he fell, he customarily used an air hose to dust off his clothing before eating. He further stated that after lunch, Mr. M, who was investigating his accident, took him to the accident site; that Mr. H then took him to (clinic) where a nurse told him he just had bruises and gave him restrictions; and that Mr. H would not honor the restrictions so he went to see Dr. O, the chiropractor who was treating his sister's workers' compensation injury.

Claimant acknowledged having had two prior back strains; having sustained a left shoulder injury in a fall while working with his prior employer; having been assaulted in September 1999; having had convictions for robbery and assault; having signed off on a "write up" for his lack of performance on the day before his accident; and, shortly after commencing work for the employer, having filed a complaint with the Equal Employment Opportunity Office for discrimination, which was dismissed. Claimant further testified that he has not worked since \_\_\_\_\_, and that Dr. O has him off work for his back and right leg injury.

Mr. H, the employer's environmental health and safety coordinator, testified that he inspected the accident site with Mr. M and that there was an even coat of dust on the ground and no disturbance of the dust in the area of the claimed fall; that he took the photographs of the area which are in evidence; and that Mr. W advised that claimant's clothing did not have the dust one would expect to see had he been on the floor when claimant came to his office to report the injury. Mr. H further stated that (Mr. BW), the nurse practitioner who examined claimant at the clinic and diagnosed coccyx contusion

and lumbar strain, spoke to him there, "off the record," questioning whether the accident had actually occurred because of the lack of low back symptoms. Mr. BW's examination notes state that the straight leg raise was negative; that there was no limitation of range of motion; that there was no ecchymosis or abrasion on the skin; that the coccyx x-rays were negative; and that claimant complained upon palpation of the lumbar paraspinal muscles. Mr. H also stated that although Mr. BW arranged for claimant's appointment with a doctor on November 17, 1999, claimant insisted on seeing his own doctor. Mr. H concluded that based on his observations and investigation, he did not believe claimant was injured at work.

Dr. O wrote on December 23, 1999, that claimant's "mechanism of injury was falling from a ladder onto his rear which caused a jamming mechanism of his lower back which traumatized the facet injuries and gave him a whipping type strain/sprain of the mid back and neck."

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:

---

Susan M. Kelley  
Appeals Judge

---

Tommy W. Lueders  
Appeals Judge