APPEAL NO. 001073

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 April 25, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of fractured ribs on his left side on _____, and that he did not have disability. The claimant requests our review, asserting that these determinations are against the great weight of the evidence. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working for the employer unloading trailers, a stack of 15 to 20 boxes fell on him in a trailer, striking his left shoulder and ribs. He said that after completing the unloading of the trailer, he reported the injury to a supervisor and was seen that day at a clinic where his ribs were x-rayed and he was given Motrin and a rib corset and returned to work at light duty. The claimant stated that he performed light duty until October 16, 1999, when his treating doctor, Dr. L, took him off work and that he is still being treated by Dr. L and is unable to work because of his rib injury. He acknowledged having been injured in an automobile accident in 1996 and stated that, while he was not then told by a doctor that he suffered broken ribs in that accident, he may have done so.

The _____, radiology report from the clinic stated the impression as "minimal deformity of 5th and 6th ant ribs on the left side probable old trauma" and no recent fracture, other abnormality, or pneumothorax. Dr. G, who diagnosed chest wall contusion on _____, and fractured ribs on September 24, 1999, wrote on March 8, 2000, that she retook the rib x-rays eight days after taking those on _____, and multiple rib fractures were seen; and that "[s]ince the patient denied any previous injury, then one must assume that the fractures were not old, especially since more fractures were seen on the films taken one week later and the original reading was 'probable.'" However, the September 24, 1999, radiology report by Dr. F states, in part, "multiple old post-traumatic lt. rib deformities" and "[n]o acute fracture."

Dr. L's October 6, 1999, report states the diagnosis as rib fracture and myalgia/myositis. Dr. L wrote on November 12, 1999, that it his chiropractic opinion that the boxes that fell on the claimant caused his ribs to be fractured; that the claimant reports no history of rib cage trauma, injury, or fracture, and that it would be up to the doctor who took the x-rays to say why he referred to "probable" old trauma.

Dr. T, a diagnostic radiologist, reviewed the imaging studies on the claimant and on January 25, 2000, reported his impression as "old fracture of the left fifth and sixth anterior ribs." Dr. T further stated that the rib fractures are well healed and occurred months to

years earlier than the examination date and that they could not have occurred on the date of injury of _____.

The 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:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge