

## APPEAL NO. 001194

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 26, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the respondent (carrier) is relieved from liability because of the claimant's failure to timely notify her employer under Section 409.001; and that the claimant did not have disability. The claimant has appealed these determinations, urging the evidence she believes met her burden of proof. The carrier has responded, asserting that the evidence is sufficient to support the challenged determinations.

### DECISION

Affirmed.

The hearing officer's Decision and Order contains a thorough recitation of the evidence with which neither party takes issue and which need not be restated. The claimant, a hospital nurse who indicated that she has been treated for pain in her pelvic area due to a pulled levator muscle since 1994 when she was injured lifting a patient, testified that on \_\_\_\_\_, while working as a nurse in the intensive care unit of a hospital, she assisted some coworkers in lifting a patient off the bed and onto a stretcher and felt a pull in her groin area. She said she laughed it off, continued to work, and told supervisor Ms. H in the office later that day that she was okay, but that she called in sick the next day. The claimant further stated that she had seen her treating doctor for her 1994 injury, Dr. H, as recently as May 19, 1999, for her 1994 injury and that she thought her pain was from the 1994 injury until she saw Dr. H again on June 18, 1999, and he told her she had "re-strained" herself. She also said that Dr. H referred her to Dr. R.

Dr. H's January 30, 1995, report states that he first saw and treated the claimant on August 4, 1994, for levator muscle spasms of the vaginal vault following her injury on July 26, 1994, while lifting a patient. Dr. H wrote excusal slips to the hospital for the claimant on June 4 and 10, 1999, stating that she has been under his care for pelvic discomfort and was unable to work. The claimant said that Dr. H had been issuing such slips for her upon her request. Dr. H wrote on August 26, 1999, that he has treated the claimant with pelvic rest and medication over the past several years for levator muscle spasms; that she has had periods when she could not work due to increased pain intensity and periods when she could work; that she recently said she had increased pelvic pain which she attributed to lifting a patient; that she has severe levator muscle spasm; that her conservative treatment has been minimally successful; and that he recommends her referral to a pain clinic.

Dr. R wrote on September 10, 1999, that according to the claimant she lifted a patient in June 1999 at work and sustained severe pain in the pelvic area; that she was seen by Dr. H; and that "[a]pparently, it is a work related injury and additional treatment should include workers' compensation claims."

Dr. T, who examined the claimant for the carrier, wrote on December 22, 1999, that by history he cannot exclude a groin strain on June 1, 1999, with a low back component under circumstances described by the claimant, but that "there is no residual evidence of same at this examination." The claimant's records reflect that she had previously undergone a hysterectomy and bilateral oophorectomy.

The claimant further testified that on June 23, 1999, she was called to the office to talk about sleeping on the job and perhaps needing to take some vacation time to get herself together and that she questioned whether she should be on workers' compensation rather than taking vacation time. She said that June 23, 1999, was the last day she has worked because she cannot sit for long due to her pain. The claimant indicated she came in on June 24, 1999, and searched through her assignment records trying to identify the patient she was assisting with lifting when she reinjured herself. The claimant contended, variously, that the employer had notice of her new injury on \_\_\_\_\_, when she talked to Ms. H in the office and again on June 24, 1999, when she commenced looking for the identity of the patient. The claimant further stated that she called Ms. C on July 16, 1999, to inquire if she was still entitled to medical treatment for her 1994 injury; that she did not complete an accident report until August 4, 1999, because she had not yet found the name of the patient she lifted; and that she did not know about the requirement that injuries must be reported to the employer within 30 days until she saw the carrier's denial of her claim. The claimant also stated at one point that she did not know if she had ever reported an on-the-job injury.

Ms. C testified that she is the employer's administrative coordinator and a nurse; that her records do not reflect that the claimant reported an injury in June 1999; that the claimant did talk to her on June 24, 1999, about her pain and need for time off to get her health problem taken care of and that the claimant never mentioned a new injury; and that the claimant did call her on July 16, 1999, saying she pulled groin muscles on June 16, 1999, pulling a patient up. Ms. C also stated that claimant came to the unit on August 4, 1999, to complete an accident report after failing earlier to come, as requested, and prepare the report.

The hearing officer found that on \_\_\_\_\_, the claimant had a flare-up of groin pain at work but that the medical evidence failed to establish that the flare-up was an aggravation of her previous groin problems; that the claimant did not sustain an injury in the course and scope of her employment on \_\_\_\_\_; that the claimant was advised not later than June 18, 1999, that she had a possible reinjury; that she gave notice of a work injury on July 16, 1999, and did not have good cause for not giving timely notice; and that due to groin pain she was unable to obtain and retain employment at wages equivalent to her preinjury wage from June 3, 1999, through June 10, 1999. The claimant challenges these and other factual findings, as well as the dispositive legal conclusions, on the grounds of the insufficiency of the evidence to support them.

The claimant had the burden to prove that she sustained the claimed injury, that she provided the employer with timely notice pursuant to Section 409.001, and that she had disability as that term is defined in Section 401.011(16). Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge