APPEAL NO. 001538

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 June 1, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury and that the claimant did not have disability resulting from the compensable injury. The claimant appeals the adverse disability determination for insufficiency of the evidence. The respondent (carrier) contends in response that the evidence is sufficient to support the challenged determination.

DECISION

Affirmed.

While not included in the hearing officer's Decision and Order, the parties stipulated that the date of the "incident" was _____. The claimant testified that on that date, a Saturday, he was hauling on his tractor-trailer for the employer a large wooden crate containing machinery; that while driving on a highway en route to the delivery point, the top of the crate struck a railroad bridge across the highway, suddenly slowing his truck which had been traveling at about 50 miles per hour; that he was thrown forward in the cab of the truck and his head struck the windshield, cracking it; and that he pulled over and called the employer's office. The claimant further stated that a driver and supervisor, Mr. H, came to the scene and accompanied him down the highway; that the crate struck another bridge but not as hard as the first; that Mr. H then arranged for another truck which could be lowered to come and haul the load to the destination; and that the second truck struck a bridge and the cargo was knocked onto the highway and damaged.

The claimant, who acknowledged having no cut or bleeding on his head, further testified that he later experienced pain in his back and left knee and that he first sought medical attention on February 1, 2000, from Dr. C, who took him off work. He also said he subsequently took a part-time job but could not recall when this employment started.

Ms. H, the employer's safety manger and a dispatcher, testified that when the claimant called the office on _____, to advise the employer of the accident, he said the cargo crate just scraped the bridge and some debris fell, that no one got hurt, and that there was no damage to the machinery inside the packing crate.

Mr. H said that when he arrived at the scene, the claimant was strapping down the container on his trailer; that he, Mr. H, got some more straps and together they further strapped down the container; and that the claimant threw straps over the container, climbed up onto and down from the trailer, and gave no appearance of being injured. Mr. H also said he thought it impossible that the claimant struck his head on the windshield given that he was wearing a seatbelt, the steering wheel is about three feet from the windshield, and the impact with the top of the container was so slight. He also said there was no second collision of the claimant's truck with another bridge and that he felt the claim is "bogus."

Dr. C's records of February 1, 2000, reflect a history of the claimant's truck coming to an abrupt halt after hitting the first bridge and the claimant's striking his head on the windshield, cracking it, and the claimant's hitting another bridge which threw him forward with his knees striking the dashboard. Dr. C diagnosed cervical IVD (intervertebral disc) without myelopathy, lumbar IVD without myelopathy, lumbar radiculitis, closed head injury, knee sprain/strain, and ankle sprain. Dr. C further reported that along with the claimant's subjective complaints, "objective observances" included pain and tenderness and decrease of function and that he was placing the claimant "on disability from 02/01/2000 thru 03/15/2000." As the hearing officer notes in her discussion of the evidence, Dr. C's numerous typed "SOAP" notes from February 1 through March 27, 2000, are both "remarkably similar" and also "contradictory."

Also in evidence is the February 4, 2000, consultation report of Dr. M giving the history of the container hitting the bridge. Dr. M's impression was cervical and lumbosacral spine sprains, left knee contusion, and rule out left knee internal derangement.

Not appealed are factual findings that on _____, the claimant was driving a truck with an oversized container on it; that he went under a bridge and the top of the container struck the bottom of the bridge; and that he sustained a cervical/lumbar strain and a knee contusion injury in the course and scope of his employment on _____, when he struck the bridge. In addition to the dispositive legal conclusion, the claimant does appeal the finding that due to the work injury, the claimant was not unable to obtain and retain employment at wages equivalent to his preinjury wages.

The claimant had the burden to prove 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 a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it 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 hearing officer's cogent discussion of the evidence makes clear that she was not persuaded by the claimant's evidence, much of which, including medical evidence, she did not find credible. It was the hearing officer's

role to assess the weight and credibility of the evidence and the record provides no justification for second-guessing her.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge