

APPEAL NO. 001560

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 May 24, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury, did not timely report the claimed injury, and did not have disability. We will treat the claimant's request for our review of these determinations as asserting the insufficiency of the evidence to support them. The respondent (carrier) contends in its response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that as of _____, she had worked for the employer for three and one-half years as a machine operator; that her duties included picking up from under a worktable, one at a time, various molds used to make "diamond" tips for saw blades; packing them with certain powders obtained from containers under the table; placing them in the hot press; removing them to cool; and then placing the saw blade tips in a box and the molds back under the table. She stated that she averaged working with about 40 molds per shift and that when she was not working at the hot press, she would help other coworkers with their hot press production, assist with taking inventory of the blades, and work in shipping and receiving.

The claimant further testified that she first began feeling low back pain in _____; that her pain became worse and she saw Dr. M on June 29, 1999; that Dr. M told her the pain was related to the heavy lifting she did at work and took her off work from June 29 to July 7, 1999; and that she went to the plant the next day and told the supervisor, Mr. S, that the doctor said her problem was work related and that if he had any questions he should call Dr. M. A note from Dr. M dated June 29, 1999, states that the claimant was seen that day. A note from Dr. M dated July 6, 1999, states that the claimant was treated for low back musculoskeletal strain, "has improved a lot," and can return to full duty work as of July 7, 1999. The claimant stated that she returned to work on July 7, 1999, and worked until sometime in October 1999 when her pain became worse; that in October 1999 she changed treating doctors to Dr. T who released her to light duty effective December 3, 1999; and that she never attempted light-duty work.

The claimant indicated that in January 2000 she changed treating doctors to Dr. G at a chiropractic clinic where she was also seen by Dr. B; and that she was taken off work and has not yet been released to return to work. Dr. B's initial report states a history of the claimant's bending over to pick up a mold on June 29, 1999, and throwing her back out. Reports of diagnostic tests in the record state the impression of bulging discs in the lumbar spine.

Mr. S stated that while he recalled the claimant's being away from work in late _____, she did not come tell him she had hurt her back on the job and that he first heard about the claimed injury after the employer was contacted by a health insurance carrier. He also testified that the plant only averages about 20 mold operations a day and some days as few as five. Ms. M, the employer's office manager, testified that she, too, recalled the claimant being off work in late June and early July 1999 but did not know about the claimant's contended injury until the employer received an August 17, 1999, letter from health insurance company.

The hearing officer found that on _____, the claimant did not injure any part of her body while working for the employer; that on or before July 29, 1999, she did not tell or otherwise notify anyone holding a supervisory or management position with the employer that she claimed a work-related injury; that neither the employer nor any person in a supervisory or management position with the employer had actual knowledge of the claimed injury on or before July 29, 1999; that in delaying reporting the claimed injury for in excess of 30 days from _____, the claimant did not exercise the degree of diligence which an ordinarily prudent person would have exercised under the same or similar circumstances; and that the claimant's inability to obtain and retain employment at wages equivalent to her wages prior to _____, at any time since _____, is because of something other than an injury she sustained while working for the employer.

The claimant had the burden to prove that she sustained the claimed injury and that she 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. This also holds true for proving timely notice of injury to the employer. 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 states in his decision that he did not find the claimant's evidence credible or persuasive. 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:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge