

APPEAL NO. 001612

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 12, 2000. He determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant's appeal will be treated as a general request for review of the sufficiency of the evidence to support the hearing officer's determinations. The respondent (carrier) replies that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that she was employed as a machine operator making plastic plates for (employer) for two years; that on _____, she injured her mid-back area and was treated by Dr. S; that Dr. S released her to return to work on February 20, 1999; that on February 22, 1999, she returned to work at 3:30 p.m., was assigned to the least-demanding machine, and worked her entire shift; and that on _____, she operated the 10-inch machine and, while lifting a 50-pound box overhead, felt pain and "a burning" down through her neck, shoulder and arm, and into her low back. She said she had not had pain in her low back and shoulder from her _____ injury. The claimant further stated that on _____, after sustaining this new injury, she went to the office, told shift foreman, Mr. M, about her injury, and went home. She said that on the following day, a Friday, she called Dr. S; that she saw Dr. S the following Monday; that Dr. S told her there was nothing more he could do for her and that she should look for different work; that she then obtained the name of Dr. O through a friend and the telephone book; and that in March 1999 she commenced treatment with Dr. O who took her off work and has kept her off work. The claimant also indicated that she was assigned a 10% impairment rating by a designated doctor; that her impairment income benefits have expired; and that the issue of whether her _____ injury extends to her neck and low back remains unresolved, apparently in another proceeding.

Mr. M testified that on _____, the claimant appeared to be having some difficulty at work, as though she had a cold or the flu; that she came to him about 6:30 p.m. stating that she was not feeling well, that her back was hurting, and that she did not feel like she was ready to come back to work. Mr. M further stated that the claimant did not say she had injured herself; that they discussed his completing a new accident report; that they mutually concluded that "it was the same thing," referring to her prior injury; and that the claimant declined his offer to prepare a new accident report.

Dr. S reported on _____, that the claimant "apparently has not had a recurrent type of injury but feels that the working and lifting having [sic] increased her pain." Dr. S further stated that he told the claimant that he cannot explain her diffuse broad areas of pain; that she appears to have gotten worse; and that he cannot explain where her pain

generator is and “[does not] feel that she has a true, specific cause of organic pain, generator causing all of these symptoms.”

In evidence is the typewritten, unsigned statement of the claimant to the employer, dated March 15, 1999, notifying the employer of an on-the-job injury on _____, the day after she returned to work following her earlier injury. The claimant states that her new doctor, Dr. O, advised her that this was a new injury as she had developed new symptoms that were different from her previous injury, and that there was a new mechanism of injury that caused damage to her neck and back.

On July 1, 1999, Dr. D, a physical medicine and rehabilitation specialist who performed a required medical examination of the claimant at the request of the Texas Workers’ Compensation Commission, reported that after performing repetitive lifting maneuvers on _____, the claimant developed diffuse pain involving her thoracic spine, lower back, posterior neck, right upper arm, and right lower leg; that she sought treatment from Dr. S; that Dr. S assessed the claimant to be capable of returning to her normal duties without restrictions on February 22, 1999; and that when the claimant resumed working on _____, she again began to perform repetitive lifting of 50-pound boxes and felt the return of her pain symptoms in a similar distribution. Dr. D further stated that “this was essentially the same distribution of pain that she was initially experiencing on _____.” Dr. D concluded that he did not feel that the claimant sustained a new injury on _____, but rather that she experienced a reoccurrence of the _____, injury.

On November 3, 1999, Dr. O reported that he reviewed Dr. D’s report; that contrary to what Dr. D reported, Dr. S only addressed pain in the thoracic spine; that on _____ the claimant had a specific act or event that caused damage to her body, namely, that “[a]s she was lifting the box she began to feel neck and back pain”; and that “it was clearly a new injury with new body parts because the patient never was treated or diagnosed with the cervical or low back problem or right shoulder problem prior to that date.” Dr. O concluded that “[i]t is [his] medical opinion based on accumulation of all of the medical evidence and objective findings here that this patient suffered injury, damage to her body, specifically the disc in her neck and her low back on _____ as a result of working on the number ten line which was much too heavy for the patient’s stature.” Dr. O also commented that a 50-pound box is almost one-half the claimant’s weight of 110 pounds.

On May 23, 2000, Dr. D wrote that he had reviewed Dr. O’s report and had some substantial disagreement with it. Dr. D stated that he interviewed the claimant extensively, trying to get the exact distribution of the claimant’s pain after each injury, and that he simply sees no change in the pain distribution and no new areas of injury. Dr. D further stated that he believes that “the 2/23/99 injury was simply a reoccurrence of [the claimant’s] pre-existing pain although on a more intense base, but [he] believe[s] that all of her current pain symptoms are directly related to the work injury of _____ without any new damage.”

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. 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 hearing officer could credit the opinion of Dr. D that the claimant did not sustain a new injury on _____, but only experienced the recurrence of symptoms from her previous injury. The hearing officer could also consider Dr. S's _____, note and the testimony of Mr. M.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge