APPEAL NO. 001624

Following a contested case hearing held on June 16, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent and cross-appellant (claimant) sustained a compensable injury on _____, and that he did not have disability from that injury. The claimant has appealed the disability determination, contending it is against the great weight of the evidence. The appellant and cross-respondent (carrier) has appealed the injury determination, also for evidentiary insufficiency. Both parties filed responses.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a detailed recitation of the evidence with which neither party takes issue. Accordingly, we will set forth only so much of the evidence as is necessary for our decision.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), while employed by (employer), as a pipe welder and while working on a pipe rack with scaffolding, his head struck a pipe overhead as he was ascending a ladder and that the blow unsnapped his hard hat snap and "jammed [his] neck down." He said that a minute or two later, as he was climbing over some railing, his back twisted as one of his feet stepped down between pipes and he fell, injuring his back. The claimant said he told coworker and long-time friend Mr. L about these injuries when he descended to the ground and that he reported them on that date to a supervisor, Mr. H, who told him to "get back to work." He further stated that he came to work on February 1 but worked on the ground; that on February 2, he told another supervisor, Mr. T, that he needed to see a doctor; and that on that date the safety manager, Mr. G, took him to a clinic where he was seen by Dr. K. The claimant further stated that on February 2 he called his attorney who referred him to Dr. P, whose staff has since treated his injuries.

In his affidavit, Mr. H stated that the claimant came to him and told him he was climbing on a scaffold and going over a conduit and felt pain in his back. Mr. H also stated that the claimant said the incident was not witnessed and that he, Mr. H, observed no limping or apparent signs of the back pain the claimant said he was having.

The claimant stated that he has owned his own welding business for about 20 years; that he has also operated his own boat repair business about three years; that he was self-employed with these businesses before commencing employment with the employer in early January; that he employs a temporary employee; and that all of his income from these businesses has gone for expenses and he has not realized any profit. The claimant further stated that he has not worked for any other employer since February 2 and that he only does little welding jobs because of Dr. P's restrictions.

Dr. K testified that when he saw the claimant on February 2, the latter's neurological and range of motion (ROM) examinations were within normal limits but that the claimant was tender to palpation. Dr. K further stated that he gave the claimant a full-duty work release on February 2 and that, in his opinion, the alleged incidents would not cause the claimant to have any disability. In evidence is Dr. K's Work Status Report, signed on February 2, stating that the claimant may "return to work without restrictions as of 1-31-00." Another of Dr. K's records of February 2 states that the claimant may "return to work as tolerated."

Dr. S, a neuroradiologist, testified that he reviewed the claimant's MRI films and that, while they showed chronic degenerative changes in the cervical and lumbar spinal regions, they did not show any new injury or recent aggravation. However, Dr. S made clear that he was not addressing whether the claimant may have sustained sprain/strain injuries.

Dr. E, who apparently examined the claimant for the carrier, reported on February 16 that the claimant complained of neck and back pain with numbness radiating into the left leg and on examination had some muscle spasm and tenderness and some decreased cervical ROM. Dr. E stated that his impression was cervical and low back sprains with radiculopathy.

Dr. P wrote on May 2 that on February 2 he diagnosed the claimant with cervical and lumbar disc disorder and lumbar radiculitis. He further stated that the claimant was released to work light duty as of February 3 and that his employer has been unable to provide him with a position to comply with the restrictions. The claimant testified that he never took Dr. P's light-duty release to the employer.

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.). We do not agree with the carrier's assertion on appeal that expert evidence on causation was required in this case.

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 states the rationale for her determinations in her decision and we find them legally and factually correct.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge