

APPEAL NO. 001639

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 19, 2000. The hearing officer determined that the respondent (claimant) sustained an injury in the course and scope of employment on _____; that the claimant had disability from March 28, 2000, up to and including the day of the hearing; and that the appellant (carrier) disputed the compensability of the claimed injury in accordance with TEX. LAB. CODE § 409.021 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6). The carrier has appealed the injury and disability issues, asserting the insufficiency of the evidence to support them. The claimant urges in response that the challenged determinations should be affirmed.

DECISION

Affirmed.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), a Friday, while working in the bakery department of the employer's store, he slipped on the icy concrete floor of a freezer while pulling on a fully loaded pallet jack and fell backwards onto his left hip and upper left buttocks. He said he yelled out to bakery manager Ms. M, who was pushing on the pallet from behind, to stop as he feared the pallet would run over his feet. The claimant further testified that he finished working his shift that day; that he was off work the next day and just laid around and read; that on Sunday he came to work and performed mostly light duties; and that on Monday he awoke with severe low back pain, came to work, reported his accident, and then went to an occupational health clinic where he was seen by physician's assistant Ms. AM who took him off work for two days. He said that on March 29 Ms. AM referred him to Dr. M who has him off work until September 3. The records reflect that Dr. M has diagnosed a lumbar herniated disc and lumbar radiculopathy and that as of March 31 he has the claimant on continuous leave with the return date as "undetermined." The claimant said that Dr. M is recommending spinal surgery.

Ms. M testified that on _____ she was pushing a loaded pallet in the store freezer while the claimant was pulling on the pallet jack because the load seemed to be stuck; that she heard the claimant yell out; and that she immediately stopped pushing, looked around the load, and saw the claimant in a low crouch. She said she asked him if he was okay and that he said he was. Ms. M further stated that when the claimant came to the store on Monday in severe pain, she followed him to the clinic and then accompanied him to a facility for x-rays and that he was limping.

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.). 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:

Kathleen C. Decker
Appeals Judge

Gary L. Kilgore
Appeals Judge