APPEAL NO. 001661

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 28, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant appeals, seeking a review of these determinations for the sufficiency of the evidence to support them. The respondent (carrier) urges that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working at a hospital as a licensed vocational nurse, she was turning a paralyzed patient in his bed and that when she lifted one leg and leaned over to push a pillow between his legs, she felt something like a burning pain in her upper back. She said she told her shift supervisor about the occurrence and filled out an employee incident report and that when her shift was over, she went home and took some pain medicine. The claimant further testified that she continued to work until sometime in November 1999 when her mother died and she took several weeks off. She said that on January 21, 2000, she saw her family doctor, Dr. B, for her injury, telling him that she hurt her left upper back and that her shoulder, arm, and hand were also hurting. Asked about the delay in seeking medical treatment for her injury, the claimant stated that "[she] just felt like [she] could handle it." She went on to say that over time her pain increased and that she began having numbness in her hands.

Ms. M, who is also employed at the hospital and takes care of various administrative matters including workers' compensation cases, testified that in September 1999 she spoke to the claimant about her incident report and asked her if she wanted to see a doctor and what she wanted to do, and that the claimant responded saying, "Oh no, its okay" and "it wasn't much." According to Ms. M, the claimant never mentioned the matter again until January 24, 2000, when she asked Ms. M if she remembered the incident and told her that her back was really bothering her and that she needed to do something about it.

Dr. B's Initial Medical Report (TWCC-61) of January 21, 2000, reflects the diagnosis codes for cervical, shoulder joint, and lumbosacral sprains/strains. The history portion of that report has the claimant stating that she strained her back turning a patient, that she continued to work in pain, and that the pain has increased and goes down her left side. Dr. B wrote on June 14, 2000, that he saw the claimant on January 21, 2000, for her work-related injury; that an MRI scan of the left shoulder taken on April 7, 2000, showed a rotator cuff tear; that the claimant worked with a torn rotator cuff full-time from _____, until November 1999 when she had to work only part-time; and that since January 21, 2000, she has discontinued working altogether. Dr. B went on to note that different people have different pain thresholds and that it was "quite conceivable" that the claimant was able to work with a torn rotator cuff. Ms. M stated that she knew from personal experience with her mother that a torn rotator cuff injury is very painful.

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 makes clear in his discussion of the evidence that he did not find the claimant's evidence persuasive given the length of time between the date of the claimed injury, _____, and the date she first sought medical treatment for the claimed injury, January 21, 2000. That another fact finder may have drawn different inferences from the evidence does not provide the Appeals Panel with a basis to disturb the hearing officer's factual determinations.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Thomas A. Knapp
Appeals Judge