

## APPEAL NO. 001771

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 27, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_. The claimant appealed, asserting, in effect, that the evidence provided by two witnesses for the respondent (carrier) was untruthful and that the hearing officer should have accepted his testimony. The carrier's response urges the sufficiency of the evidence to support the challenged determination of the hearing officer.

### DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, while working at (employer), he slipped and fell on the wet brick floor of the walk-in refrigerator and his foot "hit up under" a railing and was injured; that a manager trainee came in and helped him up; that his foot was swollen; that the manager trainee took him to a hospital; and that his foot injury was treated by a podiatrist and later by a surgeon. The claimant acknowledged having certain criminal convictions; having lied about his identity to a policeman; and having lived for several years with witness Ms. P, while still married.

Ms. P testified that on the afternoon of \_\_\_\_\_, before the claimant left for work, she confronted him about his being married; that she became very upset and demanded that he leave; and that, as he was outside the door trying to get back in, "I just slammed the door with all my might and that's how his foot got broken." She said the claimant was only wearing "flimsy house shoes" at the time. Ms. P further stated that she and her friend, Ms. W, who was present, helped the claimant back into the apartment and soaked his swollen foot in Epsom salts before she drove him to work. She further stated that she picked the claimant up at the hospital and that sometime later "he told me that he staged a fall" at work and "how he did it." Ms. W testified that she was present at the time, was near the apartment door, saw Ms. P slam the door on the claimant's foot, and saw how swollen the foot was while the claimant soaked it in Epsom salts.

The claimant had the burden to prove that he sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it 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 that he did not find the claimant's testimony credible.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Robert W. Potts  
Appeals Judge