APPEAL NO. 001792

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 26, 2000. She determined that the appellant's (claimant) back injury is not a result of the compensable injury he sustained on _____, and that he did not have disability from October 14, 1999, through the date of the hearing. The claimant has requested review of these determinations, asserting that they are against the great weight of the evidence. The respondent (carrier) contends in response that the evidence is sufficient to support them.

DECISION

Affirmed.

Though not reflected in the hearing officer's Decision and Order, the parties stipulated that on _____, the claimant sustained a compensable injury to his right and left wrists. The claimant testified that on that date, while employed as a piano mover, he slipped off the lift gate of the employer's truck, apparently first striking his wrists before landing on his back on the ground and striking his head. He indicated that the lift gate was between five and six feet above the ground. He said he was taken that day to a clinic used by the employer where he was seen by Dr. SS, and that in addition to his wrists he also complained to her about his back; that he was thereafter seen by Dr. R, an orthopedic surgeon, who only treated his hands because she is a hand specialist; that he was subsequently treated for his hands by Dr. C, a chiropractor; that Dr. C referred him to Dr. W, a physiatrist; that he later changed chiropractors to Dr. H; and that Dr. H referred him to Dr. MS, an orthopedic surgeon.

The claimant further testified that he returned to work in late September 1999 at light duty but soon began moving pianos again. He said that by February 12, 2000, his back pain was so severe he could barely walk; that he stopped working on that date and sought treatment for his back; and that Dr. H has had him off work since sometime in March 2000. Mr. F, the owner of the business the claimant worked for, testified that the claimant did not mention his back being hurt on the date he fell and described having heard that the claimant broke the fall with his wrists. He further stated that the claimant returned to work in late September 1999 and soon wanted to get out of the shop and back onto the moving truck so he could earn some overtime pay. Mr. F also testified that the claimant would have averaged moving five or six pianos a day and that he was aware of no complaint from the claimant about his back before February 12, 2000.

The claimant indicated that he was not aware of any medical record created before February 12, 2000, which reflected his complaints of back pain but insisted that he did complain about his back to all the doctors. In a questionnaire he completed on September 7, 1999, for Dr. R, the claimant stated that he was injured on _____, when he fell off the lift of a truck and that Dr. R will be treating his "wrists." Dr. R's office note of that date states that the claimant fell off a truck and onto his back and both wrists but contains no

further mention of the back. The earliest report of a diagnostic test for the lumbar spine in evidence is dated February 15, 2000. Dr. C's record of February 17, 2000, includes several diagnoses of the lumbar spine region and states the date of injury as "insidious onset."

The claimant had the burden to prove by a preponderance of the evidence both that his compensable injury extended to his back and the period of his disability, if any. 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 her discussion of the evidence that she was persuaded by the lack of references in the medical records to the diagnosis and treatment of any back injury before mid-February 2000. That another hearing officer may well have inferred that the claimant did indeed injure his back when he fell some five feet off the back of a truck and onto his back does not permit us to disturb this hearing officer's factual determination drawing the opposite inference.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge