APPEAL NO. 001858

Following a contested case hearing held on July 11, 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 appellant (claimant) did not sustain a compensable injury on _____, and that she has not had disability. The claimant has appealed, asserting that the hearing officer's determinations are against the great weight of the evidence. The respondent (carrier) urges in response that the evidence is sufficient to support the hearing officer's determinations.

DECISION

Affirmed.

The claimant testified that on _____, at about 9: 00 a.m., while working as a temporary employee, she leaned across a conveyor belt to press a button to stop the conveyor belt because she was concerned that boxes of crystal glasses on the conveyor belt were about to fall on the floor. She said that when she leaned across the conveyor belt to hit the stop button, she felt pain in her low back; that she reported the injury to a manager, Mr. C; and that she continued to work until about 4:00 p.m. when she was informed that she would no longer be working for the employer and so she went home. The claimant further testified that she applied for and received unemployment compensation benefits from the Texas Workforce Commission (TWC) during the summer of 1999; that she sought treatment at the K-Clinic and from a chiropractor but was not treated because her workers' compensation claim was not accepted; that in August 1999 she visited (hospital) and complained about her low back pain and was given medication; and that on March 20, 2000, she visited Dr. H, in response to a TV ad and that he treated her and kept her off work from March 25 to May 8, 2000.

The claimant's two Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) forms, which she signed on August 26 and September 24, 1999, state that her injury occurred when she lifted boxes off the line. According to a TWC Appeal Tribunal decision dated September 17, 1999, the claimant was discharged by the employer on May 12, 1999, while at the plant where she was working as a packer because she shouted insults directed at her employer as well as the employer's client company and stopped her work while she made her complaints.

The hospital records of August 17, 1999, reflect that the claimant gave a history of severe low back pain for several months and of working at loading crates on an assembly line and suffering from low back pain ever since. The discharge impression was lower back strain. Another hospital record states that the claimant "states 'not a workman's comp.'"

Dr. H and his associate signed a letter dated May 11, 2000, stating, in part, that because they are "patient advocate doctors," they see cases that "on paper may not appear 'good,'" but that they feel an obligation to treat persons in pain regardless of the potential for reimbursement, and that the claimant's case "may not look 'good' because of the lapse in time of treatment" but that because they know the claimant and have seen her work ethic in the clinic, they feel this "is a legitimate claim that should be considered compensable."

The hearing officer found that on _____, the claimant did not sustain an injury to her back while leaning over a conveyor belt to get to the turn-off switch. She also found that the claimant's inability to obtain and retain employment at her preinjury wage equivalent from March 20, 2000, to the date of the hearing was the result of something other than an injury occurring while she worked for the employer.

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's discussion of the evidence makes clear that she did not find the claimant's testimony persuasive.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge