APPEAL NO. 002151

Following a contested case hearing, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the date of the claimed injury is _____; that the claimant did not have disability; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health and disability policy. The claimant has appealed the injury and disability determinations for evidentiary insufficiency. The respondent (self-insured employer) contends in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer's Decision and Order contains a recitation of the essential evidence with which neither party takes issue. Accordingly, only so much of the evidence as is necessary to support this decision will be set out.

The claimant testified that on _____ (all dates are in 2000 unless otherwise stated), he felt a "pop" or "click" in his low back while squatting to pick up five by eight feet sheets of wood and lifting them overhead to place on rollers. He said that on that day he told his lead man, Mr. S, his back was hurting and he needed to see the employer's nurse so he could see a doctor; that he visited Ms. P, the employer's nurse, and told her his back was hurting while working but did not tell her he had injured his back on the job because he was afraid of losing his job and because he was not sure his back had been injured at work and he felt he would soon be able to return to work; and that he saw Dr. VS, who took him off work for five days. The claimant stated that he returned to work on March 25 and again felt a "click" in his back; that he then realized he had injured his back on the job; that he again saw Ms. P but did not recall telling her he did not hurt his back on the job; and that he again felt a "click" on March 27, the last day he worked.

Ms. P testified that when the claimant came to her office on March 10 wanting to see the doctor because his back was hurting, she asked him if he had hurt his back on the job and he said he had not and thought the problem was his kidneys. She also said that the claimant did not tell her that his back had "popped" that day. Ms. P further testified that when the claimant next visited her office on March 27 advising that his back was hurting too bad to continue working, she again asked him if he had hurt his back on the job and he indicated that he had not. Ms. P's notes also reflect that the claimant told her on March 28 that he could not remember hurting himself but that his back did start hurting on the job.

Mr. S testified that the claimant never told him he had injured his back on the job but did indicate he had back pain and asked for a back brace which he, Mr. S, ordered. Mr.

S also indicated that when he was present with the claimant in Ms. P's office, the claimant did not advise her that he had injured his back on the job.

The claimant also stated that he had applied for and received the employer's short-term disability benefits. Mr. K, the production manager, wrote on April 3 that when he discussed the injury with the claimant, the latter was never clear about when his injury became an on-the-job injury but that the claimant did state that he could not live on the small short-term disability payments. He testified in similar fashion.

The hearing officer found that the claimant did not sustain an injury while performing his job duties on March 10; that he has sustained an injurious condition of undetermined origin to his low back and lumbar spine; and that as a result of his injurious condition, he has been unable to obtain and retain employment at his preinjury wages from March 15 through the date of the hearing.

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 hearing officer makes clear that he did not find the claimant's testimony persuasive in light of the various inconsistencies in his testimony and the conflicts with the other testimony and evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge