

APPEAL NO. 002269

Following a contested case hearing held on June 21 and August 31, 2000, with the record closing on August 31, 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 respondent (claimant) sustained an injury in the course and scope of his employment on _____, and that he had disability from that injury from August 20, 1999, through April 26, 2000, and from May 22, 2000, through the date of the hearing. The appellant (carrier) has appealed these determinations, asserting that the hearing officer erred in disregarding the more credible evidence presented by the carrier and in finding credible the testimony of the claimant and the coworkers who testified for him. The claimant's response urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed as reformed.

The claimant, a pipefitter, testified that on _____, a Monday, he was directed by his supervisor, Mr. H, to clean the water jugs around the yard and fill them with ice and water; that these containers are large and heavy when filled with ice and water; and that while lifting one of the jugs that day he felt a sharp pain from his left hip to his knee. He indicated that he worked on Tuesday and Wednesday with increasing pain; that on Thursday he told Mr. H, in the presence of Mr. S, that he needed to see a doctor and left work around 2:30 p.m.; and that he saw Dr. H on Friday and was taken off work. The claimant further stated that Dr. W, who he was seeing at the time, released him for light work on April 26, 2000, but that the employer did not offer him any work, and that he looked elsewhere for jobs; that Dr. W took him off work on May 22, 2000, because his pain returned; and that he has not worked since Thursday, August 19, 1999. He denied stating to Mr. H, in the presence of Mr. S, that he hurt his leg jogging. The claimant also denied giving a history of hurting his leg jogging to Dr. H and said that Dr. H refused his request that he revise the record. He did state that after undergoing coronary artery bypass surgery prior to his injury at work, he took up jogging several times a week.

Mr. Z testified that he is a friend and was a coworker of the claimant's; that he helped the claimant with servicing the water jugs on August 17, 1999; and that the claimant told him they were very heavy when filled to the top and that he had hurt his leg lifting one the day before. He also said that the claimant had told him he had jogged over the weekend but not that he had hurt his leg jogging. Mr. Z also said that he remembered the claimant's asking him to push his cart back to the workshop for him on _____, because he had hurt his leg.

Mr. I, a coworker, testified that he helped the claimant with the water jugs on August 18, 1999, and that the claimant had warned him about not filling them to the top and said he had hurt himself lifting them the previous day.

Mr. H testified that when he asked the claimant on August 17, 1999, why he was limping, the claimant responded that he had hurt himself the previous afternoon while jogging. Mr. H also stated that the claimant told him on August 18, 1999, that he may have hurt his leg putting out the water and that when he reminded the claimant that he had previously said he hurt himself jogging, the claimant responded, "yes, that's right." Mr. S testified that he was in the office and heard the exchanges between the claimant and Mr. H and that claimant had told him also that he had hurt his leg while jogging.

The carrier challenges findings that the claimant was a credible witness and established that on _____, while working in the course and scope of his employment for the employer he sustained damage or harm to his lumbar spine with left leg radiculopathy; that Mr. Z was a credible witness who corroborated the claimant's account of the incident of _____; that the medical records establish that the claimant has a herniated disc at the L3-4 level; and that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from August 20, 1999, through April 26, 2000, and from May 22, 2000, through the date of the hearing as a result "of the August 16, 2000 [sic], date of injury." We reform the obvious typographical error in Finding of Fact No. 5 to read "_____, date of injury."

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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Tommy W. Lueders
Appeals Judge