

APPEAL NO. 002280

Following a contested case hearing held on August 28, 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's (claimant) compensable injury of _____, stipulated as to the left shoulder, did not extend to his back, and that he did not have any disability as a result of the _____, injury. The claimant's request for review will be considered a challenge to the sufficiency of the evidence to support these determinations. The file does not contain a response from the carrier.

DECISION

Affirmed.

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

The parties stipulated that on _____, the claimant sustained a compensable injury to his right shoulder. The claimant testified that on that date, while he was bent over picking up tools, and apparently while he was on a scaffold attached to a high rise building with cables to be used to repair exterior windows, a motor weighing approximately 200 pounds, and larger than a small air conditioner unit, which was attached to a cable and used to raise and lower the scaffold, fell on his mid-back area and pinned him down on his hands and knees until two coworkers, Mr. G and Mr. A, who were with him on the scaffold, lifted it off of him. He said he reported the injury to the employer a day or two later when his back began to really hurt. The claimant acknowledged that he had previously hurt his back in a construction accident; that he was still taking Hydrocodone, prescribed by Dr. P, for that injury as recently as a few days before _____, although his last visit with Dr. P was in August 1999; that he had been warned by his supervisor, Mr. M, shortly before _____, about coming to work under the influence; that Mr. M had asked him to provide a letter from Dr. P about his Hydrocodone prescription and usage as it related to his ability to work safely; and that he has not worked since January 30, 2000, when he failed to provide such a letter to Mr. M. The claimant also acknowledged having been incarcerated for criminal mischief for 10 days about three or four months before the hearing and having been hospitalized about three months before the hearing for treatment of drug overdose.

Mr. A testified that at the time of the claimed injury, the claimant was swaying and talking oddly. He said that the motor was on a swivel and just tilted a few inches, grazing the claimant's shoulder, and did not fall; that the claimant was not on his hands and knees at the time; and that when he asked the claimant if he was okay, the latter responded that he was. Mr. A also said he continued working on the same team with the claimant until the claimant stopped working on January 30, 2000, and that he never complained of being injured.

Mr. M testified that he investigated the claim by the claimant and was told by both Mr. G and Mr. A that the motor only moved on its swivel and struck the claimant's shoulder. He also stated that he spoke twice to the claimant in January 2000 about his use of Hydrocodone and that when the claimant came in for his check on January 25, 2000, and the subject of a doctor's letter about the Hydrocodone was raised, the claimant stated that he had an accident a couple of weeks ago and that if Mr. M continued to follow up on the Hydrocodone letter, he would have to sue the employer. Mr. M also said that when he asked the claimant about the letter on January 31, 2000, the claimant responded with an expletive and walked off the job.

The hearing officer found that the claimant did not sustain physical harm or damage to the structure of his back on _____, as a result of an injury in the course and scope of his employment when a motor slipped, and that he was not unable to "obtain or [sic] retain" employment at wages equivalent to his preinjury wage level due to the compensable injury to his shoulder on _____.

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 indicates that she found the testimony of Mr. M regarding the mechanism of the claimed injury to be more the credible and persuasive.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge