APPEAL NO. 002357

Following a contested case hearing held on September 18, 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/cross-respondent's (claimant) compensable right ankle sprain injury of _____, does not extend to his diagnosed rupture of the right Achilles tendon, and that he has had disability beginning on August 22, 1999, and continuing through October 11, 1999. The claimant appeals, asserting that his testimony and medical records established that his right Achilles tendon injury was part of his original injury. The respondent/cross-appellant (carrier) filed an appeal of the disability determination conditioned upon the claimant's filing an appeal. The carrier filed a response to the claimant's appeal. The file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant testified that on _____, after moving his "mud" truck forward at a job site, he slipped off the fuel tank as he dismounted the truck and landed on his right foot, which went forward in the mud and twisted his right ankle. He said he did not fall to the ground and continued to work but that he was in pain; that on or about July 22, 1999, his right ankle was treated in Mexico by Dr. R, who placed it in a cast; that about a week later he returned to work for a different employer and that the pain became so severe that on August 22, 1999, he was assigned to a driving job, a light-duty job at less pay. The claimant further stated that after treatment by Dr. R, he saw a series of doctors including Dr. GC, Dr. CC, Dr. B, Dr. JBW, and Dr. JW and that he still sees Dr. JBW. He further stated that while working for still another employer on May 17, 2000, he pushed down hard on a "cheater bar" to loosen a cable and felt a "pop" and pain in his right ankle. He indicated that he thereafter went to a medical center where he was diagnosed with the ruptured right Achilles tendon he contends is part of the _____, injury.

The records of Dr. JW for the period from July 14, 1998, to October 5, 1998, reflect the claimant's diagnosis as chronic, slowly resolving bilateral Achilles tendinitis. Dr. GC's diagnosis on September 7, 1999, was a right internal collateral ligament sprain with marked reduction in the range of motion of the right ankle. A February 28, 2000, record of Dr. B states her impression as chronic right ankle pain status post an inversion injury and bilateral Achilles tendinitis. Dr. B's April 12, 2000, diagnosis, following a bone scan, was right ankle posttraumatic arthritis. A May 15, 2000, record of the _____ Medical Center states that the claimant said that, as he was breaking a pipe with a cheater bar, he exerted forceful downward pressure on his right foot and felt a "pop" in the Achilles tendon area and that he indicated he had been having problems with his right ankle for over a year. This report stated the assessment as a partial Achilles tendon rupture. Dr. JBW wrote on June 17, 2000, that the claimant complained of a right ankle injury occurring within the past 48 hours while using a bar and pushing but that he has had problems with

this since the previous July and gives a history of several plantar flexion type injuries with progressively increasing symptoms in both his ankle and Achilles tendon; and that claimant may have a chronic, subacute rupture of his Achilles tendon. Dr. JBW wrote on June 21, 2000, that an MRI discloses a chronic Achilles rupture which appears to have occurred quite some time ago and is not an acute injury. The August 29, 2000, report of Dr. P, who reviewed the claimant's medical records, states the assessment as an apparent right ankle sprain in July 1999, and an apparent right Achilles tendon rupture suffered in May 2000.

Concerning the issue of disability, the hearing officer states in her discussion of the evidence that the claimant has shown that he was unable, due to his compensable right ankle injury to obtain and retain employment at wages equivalent to his preinjury wage beginning on August 22, 1999, when he began working as a driver in a light-duty position, rather than as a lead pusher, and that he was released to full duty two weeks after September 27, 1999, that is, on October 22, 1999, and that the remaining periods of claimed disability are attributable to the Achilles tendon injury, which is not compensable. In its conditional appeal of the disability issue, the carrier asserts that the medical records fail to adequately show that any period of disability was due to the _____, injury rather than the noncompensable May 15, 2000, injury.

The hearing officer found that the claimant's ruptured right Achilles tendon did not occur on _____, nor was it a direct and natural result of his compensable right ankle sprain injury, and that the claimant was unable to "obtain or [sic] retain" employment at wages equivalent to his preinjury wage due to his compensable injury beginning on August 22, 1999, and continuing through October 11, 1999. The claimant challenges the sufficiency of the evidence to support the former finding while the carrier asserts the same challenge to the latter finding.

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). Weighing the conflicting medical evidence was within the province of the hearing officer.

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