

APPEAL NO. 002401

Following a contested case hearing held on September 20, 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 did not have disability due to the claimed injury. The claimant has appealed these determinations on evidentiary sufficiency grounds. The respondent (carrier) urges in response that the challenged determinations are not against the great weight of the evidence.

DECISION

Affirmed.

The claimant testified that on _____, which was approximately two weeks after commencing her employment with the employer as a motel housekeeper, she injured her left knee when she pulled a linen cart out of a closet and the cart struck her knee. She said the incident happened between 9:00 a.m. and 10:00 a.m. and that she worked until between 5:00 p.m. and 6:00 p.m.; that she told the assistant head of housekeeping about the injury the next day and was sent to a (clinic) where she was seen and treated by Dr. A; that Dr. A obtained x-rays of her injured left knee, prescribed medications and a knee brace, and released her to return to work with restrictions; and that the employer could not meet these restrictions and sent her home. Dr. A's Initial Medical Report (TWCC-61) reflecting the claimant's initial visit on April 3, 2000, states as the history that the claimant has left knee pain and "denies any injury." The April 13, 2000, report of the claimant's physical therapy initial evaluation by Mr. B, the physical therapist, states that the claimant said that her left knee pain developed with repetitive climbing of stairs and walking during her job as a housekeeper. The claimant stated that after retaining her attorney, she commenced a course of chiropractic treatment from Dr. G who has had her off work from April 13, through the date of the hearing.

Asked about the statement on the Employer's First Report of Injury or Illness (TWCC-1) which said her left leg was injured from walking up and down stairs, the claimant stated that she did say that walking up and down the stairs between the first and second floors of the motel hurt her leg but did not say that this was how her knee was injured. The claimant, who indicated she was educated through the 11th grade, also said that her speech is "not correct" and that she "may say legs or knees or arms and it could be one" and that she could be referring to her left knee. She further stated that she did not provide a completely truthful history of her employment, prior injuries, and prior workers' compensation claims to Mr. T, a carrier representative, when he interviewed her by telephone on April 3, 2000, because she was not certain who he was and what he was about. She conceded having been injured on her first day on the job with her previous employer, another motel, and applying for a housekeeping job with the employer in this case when her impairment income benefits expired. The carrier introduced a Texas Workers' Compensation Commission records check dated May 5, 2000, which reflects that

between June 8, 1998, and April 3, 2000, 14 workers' compensation claims files were opened on the claimant. The carrier also introduced the Report of Medical Evaluation (TWCC-69) of Dr. P, dated September 1, 1993, which refers to a _____, injury. Dr. P wrote that the claimant magnified her symptoms to mislead the examiner and that her past history suggests "a continuous pattern of work-related injuries followed by long periods of disability."

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 clearly 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:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge