

## APPEAL NO. 002630

Following a contested case hearing held in Fort Worth, Texas, on October 25, 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 he did not have disability. The claimant appeals on evidentiary grounds, arguing that his evidence met his burden of proof on the disputed issues. 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 \_\_\_\_\_ (all dates are in 2000 unless otherwise stated), his first day back at work as a crane oiler after having been off work seven weeks for the surgical repair of the left thumb he injured at work, he was assigned to a job requiring him to lift four heavy steel crane outrigger plates approximately 36 times that day. He further stated that on June 30, while in the employer's yard, he leaned over a truck tire to watch a coworker who was having some trouble changing the adjacent tire and felt a "pop" in his low back on the left side and pain which extended down to his left foot. The claimant contended that his low back was injured on \_\_\_\_\_ from the heavy lifting and that he did not realize until the June 30 incident that he had seriously injured his low back on \_\_\_\_\_. The crane operator testified that the claimant made no complaint of back pain on \_\_\_\_\_ nor did he evidence any sign of having back pain. The coworker testified that he had no trouble changing the truck tire on June 30, that the claimant was not nearby and did not lean over a tire, and that the claimant did not indicate he had back pain.

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:

---

Gary L. Kilgore  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge