

APPEAL NO. 002697

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on November 1, 2000 resolved the sole disputed issue by determining that the respondent (claimant) sustained a compensable low back injury on _____. The appellant (carrier) has appealed, asserting that this determination is against the great weight of the evidence given the length of time between the claimant's fall from a ladder at work on _____, and the documentation of low back pain in her medical records. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the carrier accepted liability for a compensable right knee injury on _____, and the claimant's testimony that on that date she fell from an eight-foot ladder onto a concrete floor at the convenience store where she was working was not disputed. The claimant maintained that she repeatedly told her primary care doctor, Dr. S, that her low back was hurting after the fall, in addition to her right knee, which was surgically treated, and that Dr. S would just respond by telling her that her low back pain "would eventually go away." Dr. S wrote that he did not document low back pain complaints before October 1999. The claimant testified that she changed treating doctors to Dr. O, a neurosurgeon, who operated on her low back at the L5 level in July 2000 and billed her group health insurance carrier.

The claimant had the burden to prove that her compensable injury extended to her low back. The hearing officer found that the fall on _____, caused an injury to the claimant's low back. 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's determination finds support in the emergency room record of _____; a physical therapy record of March 29, 1999; and Dr. O's records of November 9, 1999, February 8, 2000, and July 28, 2000.

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