

APPEAL NO. 002727

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 October 27, 2000, the hearing officer resolved the disputed issues by concluding that the respondent's (claimant) injury of _____, (at which time the employer had workers' compensation insurance from respondent (carrier 1) is a producing cause of the claimant's lumbar spine problems after _____; that the claimant sustained a compensable injury on _____ (at which time the employer was insured by the appellant, (carrier 2); and that the claimant had disability from April 13 through October 27, 2000. Carrier 2 has appealed, asserting that the evidence is insufficient to support the determination that the claimant sustained a new injury on _____, and thus that the period of disability found by the hearing officer is the result of the earlier compensable injury for which carrier 1 is liable. The file does not contain responses from the claimant and carrier 2.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____. A finding that prior to _____, the claimant was working in a modified or light-duty position is not appealed. The claimant testified that on _____, while still on light or modified duty because of his _____ lumbar spine injury and working as a quality control supervisor, his supervisor asked him to relieve a packing machine operator who needed to leave for training; that another employee working on that line got behind and he had to help him out to keep the line moving; and that after approximately five minutes of bending over to pick up five-pound stacks of plastic cups from a bin and turning to his right and leaning forward to place them on a conveyor, he felt pain in his low back which became so intense he reported it to his supervisor and went to the human resources office where he was assisted in calling his doctor to arrange for a pain shot. The claimant acknowledged that he had chronic, intermittent pain after his 1997 low back injury, which involved mild herniated discs at L1-2 and L2-3, but said the pain from the _____, injury was very different and much worse and that it also resulted in some numbness in his legs. The claimant's supervisor, Ms. B, and the employer's human resources assistant, Mr. J, both testified that on _____, the claimant stated that he had a lot of pain in his back and needed to see his doctor for a shot but that he did not report a new injury as such.

The claimant's treating doctor, Dr. H, wrote on August 9, 2000, that the claimant's prior low back MRI of February 23, 1998, demonstrated no abnormality at the L5-S1 level; whereas, a new MRI shows the L5-S1 disc with prominent annular bulging and left-sided neural foraminal narrowing which needs prompt neurologic attention.

Carrier 2 disputes findings that on _____, while performing work-related activities, including bending, stooping, and lifting, the claimant aggravated or worsened a preexisting injury or condition; that the claimant suffered a new and distinct lower back

injury on _____; and that the claimant was unable to work from April 13 through October 27, 2000, due to the continuing effects from his compensable injury of _____.

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:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge