APPEAL NO. 002755

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 13, 2000, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable repetitive trauma injury to his bilateral upper extremities and cervical spine and that he did not have disability. The claimant has appealed and contends, in essence, that his evidence met his burden of proof. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

We note at the outset that the hearing officer's recitation of the exhibits states that the claimant introduced seven exhibits and that the seventh exhibit was not admitted. However, the record reflects that the claimant introduced eight exhibits and that the eighth exhibit was excluded upon the objection of the carrier.

The claimant testified that he commenced working as a dishwasher for the employer at a cafeteria on _____ (all dates are in 2000); that his duties involved loading dishes into an automatic dishwasher, which he did for three and one-half hours in the morning and three and one-half hours in the afternoon; and that near the end of his shift on _____ he had pain, numbness, and fatigue in his arms, shoulders, and neck for which he sought medical attention on _____. The testimony of the employer's manager, Mr. M, conflicted with that of the claimant concerning the number of dishes loaded and washed per shift and he stated that from the outset of his employment the claimant constantly complained about the volume of work he had to do and that, before he stopped working altogether on _____, his duties were changed to bussing because of his high rate of breakage.

Although the hearing officer states in his Statement of the Evidence that the medical records and diagnostic reports do not support a diagnosis of carpal tunnel syndrome nor do they establish a causal link between the claimed injury and the claimant's work activities, 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 could credit the testimony of Mr. M and conclude that the claimant failed to prove he sustained an injury from repetitively traumatic work activities during his brief period of employment. The finding of a compensable injury is a prerequisite to a finding of disability.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge