

APPEAL NO. 002779

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 (CCH) held on August 30, 2000, with the record closing on October 11, 2000, the hearing officer resolved the disputed issues by concluding that the correct date of injury is _____; that the appellant (claimant) did not sustain a compensable injury; that the claimant did not timely report the alleged injury to her employer and did not show good cause for her failure to timely report the alleged injury; and that because the claimant did not sustain a compensable injury, she did not have disability. The claimant has appealed the injury, timely notice, and disability conclusions and certain underlying factual findings on sufficiency of the evidence grounds. The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

The claimant testified that on _____, she sustained a compensable injury to her low back and left elbow and was assigned a 13% impairment rating for those injuries; that on _____, while pulling a heavy cart loaded with shoes over the edge of some carpet at work, her "whole body" began to hurt; that she told two supervisors that she hurt all over although her back hurt worse; that later that day she saw Dr. P, who was already treating her back pain, and was given a shot; that she received treatment for her upper extremities from Dr. H; and that she underwent carpal tunnel surgery on her right arm on September 15, 1998, the date she began losing time from work. The claimant also said that her back pain was worse after the _____ injury and that it extended down to her ankles; that her health insurance carrier paid for the treatment of her upper extremities; and that she had not prevailed at a prior CCH at which was considered the injury she sustained to her forearm on _____, while getting freight down. The claimant introduced various letters from Dr. P and Dr. H in an effort to establish that she sustained new injuries on _____. The self-insured introduced, without objection, both the transcript of a CCH held on July 8, 1999, at which the claimant testified, as well as the Decision and Order issued thereafter by a different hearing officer, who determined that the claimant was not injured in the course and scope of her employment with the employer on _____, while pulling a box from a stack of boxes and that she did not thereafter have disability. The hearing officer in the prior case made clear that he found both the claimant's testimony and her medical records to be contradictory and lacking in credibility.

Though disputed by the claimant, the hearing officer specifically found that the claimant gave an inconsistent and contradictory version of the events and that her medical evidence does not support her claim of having sustained a "new" injury on _____.

The claimant had the burden to prove by a preponderance of the evidence that she sustained the claimed injury, that she timely reported the injury or had good cause for not doing so, and that she had disability as that term is defined in Section 401.011(16). 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) and that holds true as well for timely notice and good cause. 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:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge