

APPEAL NO. 002850

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 17, 2000, resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____; that because she did not sustain a compensable injury, she did not have disability; and that (employer) did not tender a bona fide offer of employment to the claimant. The claimant has appealed, asserting that her evidence established that she sustained the claimed injury and had disability from _____, to the date of the hearing. The respondent (carrier) filed a response urging the sufficiency of the evidence to support the challenged determinations. The hearing officer's resolution of the bond fide offer of employment issue, not having been appealed, has become final.

DECISION

Affirmed.

The claimant testified that on _____, while working as a housekeeper for the employer, she helped her supervisor carry 12 mattresses and box springs at the end of her shift; that she felt no pain at the time; that she picked up a friend to go to dinner and upon arrival at the restaurant she felt "a pull" in her low back when she tried to get out of the car and began to experience pain; that she went to an emergency room on _____, for low back pain and was taken off work; that she has been diagnosed with a lumbar strain and treated conservatively by the doctors she has seen; and that she has since remained unable to work due to her pain. The claimant acknowledged having had preexisting low back pain from pulling weeds but stressed that her prior low back pain was on the left side while the low back pain she contends was caused by lifting the mattresses and box springs is on the right side.

The claimant had the burden to prove that she sustained the claimed injury and that she 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 hearing officer's discussion of the evidence notes the inconsistencies between the claimant's testimony and the medical records concerning the mechanism of injury and also notes the physical abilities demonstrated by the claimant in a surveillance videotape

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge