

APPEAL NO. 002902

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 13, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted), moving "a rail of scaffolding."

The appellant (carrier) appealed, citing contradictions between the claimant's testimony and other evidence, and asserting that the claimant only had pain and no injury as defined in Section 401.011(26). The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a maintenance man at a condominium complex. The claimant testified that on \_\_\_\_\_ or \_\_\_\_\_, as he was moving some scaffolding rails, he twisted and "felt a twinge" in his back. The claimant said that he attempted to see a doctor in a hospital emergency room on about April 23 or 24 but was unsuccessful. The claimant eventually saw a chiropractor who diagnosed spondylosis at L5 and decreased disc space at L4-5 and L5-S1. Much of the testimony regarding any prior back complaints the claimant may have had, and whether the claimant was lifting scaffold rails or bags of cement or was just "hauling, lifting [and] pulling," was in dispute.

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.). 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.

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Robert E. Lang  
Appeals Panel  
Manager/Judge

---

Robert W. Potts  
Appeals Judge