

APPEAL NO. 002916

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 21, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable (hernia) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant has had disability from _____ and continuing through the date of the CCH.

The appellant (carrier) appealed, pointing to evidence that the claimant had told two coworkers that he had injured himself lifting weights at home. The carrier requests reversal. The claimant urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was lifting a bundle of denim pants, which weighed about 55 pounds, when the strap broke, causing the claimant to feel immediate pain in his groin. The claimant reported the incident "immediately" and was eventually diagnosed with an inguinal hernia. The carrier presented the testimony of a coworker who said that the claimant told her that he had injured a testicle at home the previous day lifting weights. The carrier also presented a statement (but not the testimony) of another coworker, who was at the CCH, which supported the theory that the claimant injured himself at home lifting weights. Each party stresses the credibility of its witness. The hearing officer found the claimant's "testimony was by far, more credible." The carrier premises its dispute of disability on the basis that the claimant did not have a compensable injury.

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:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge