

APPEAL NO. 002934

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 8, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) did not sustain an injury in the course and scope of employment on _____, and did not have disability resulting from the alleged injury. The claimant appealed, asserting that the hearing officer's decision is against the great weight and preponderance of the evidence and requesting that we reverse the hearing officer's determinations and render a new decision in his favor. The respondent (carrier) responded that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The claimant testified that he was moving a box of envelopes on _____, and felt a tearing in his right shoulder. The evidence before the hearing officer was that the pain lasted for 30 seconds or less. On June 22, 2000, the claimant was at home, eating popcorn, and experienced the onset of severe pain in his right shoulder. The claimant testified that he believes that the incident on _____, was the cause of his shoulder pain because he could not think of anything else that could have caused the problems. The hearing officer found that the claimant had failed to prove that he sustained any damage or harm to the physical structure of his body on _____, and noted that the claimant had not experienced any pain or other symptoms between _____, and June 22, 2000.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. If deemed credible by the hearing officer, the disputed issues of injury and disability may 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.). We 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).

We affirm the hearing officer's decision and order.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge