

APPEAL NO. 002962

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 December 7, 2000, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that he had disability from May 23, 2000, through the date of the hearing. The appellant (carrier) has appealed on evidentiary sufficiency grounds. The claimant's response urges the sufficiency of the evidence to warrant affirmance.

DECISION

Affirmed.

The hearing officer did not err in her resolution of the two disputed issues. The claimant testified that on _____, while sawing limbs off a fallen tree for his logging company employer, he slipped and fell and that as he pitched his chain saw away and was falling to the ground a limb caught him under the left arm. He said he did not know whether any coworker witnessed the fall; that the left shoulder pain was not too severe as he ended his shift soon after the fall; that by the next morning the pain was so bad his wife drove him to an emergency room; that he was diagnosed with a probable torn rotator cuff and told to see a specialist; and that Dr. L, who has him off work, has advised that conservative treatment is not effective and that he needs surgery on the shoulder. Witnesses for the employer stated that the claimant gave no indication of having been injured at the end of his shift on _____ and the owner speculated that the claimant may have hurt his shoulder while training a pit bull dog.

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. 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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge