

APPEAL NO. 002978

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 1, 2000. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury to his low back on _____, and that he has had disability from June 30, 2000, through the date of the hearing. The appellant (carrier) has appealed, asserting the insufficiency of the evidence to support the determination of a compensable injury. The claimant=s response urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable low back injury on _____, and that he has had disability from June 30, 2000, through the date of the hearing. The claimant testified that on _____, while working as a welder, he bent over to pick up a four-pound sledgehammer he had dropped and as he straightened up felt a severe, stabbing low back pain which radiated into both legs. His diagnostic testing revealed a large herniation at the L4-5 level. He conceded not having stated to supervisors that his back pain was work-related when he advised them of it; however, timely notice of injury was not a disputed issue. The parties stipulated to all the elements of disability except for the compensability of the injury.

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:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge