

APPEAL NO. 010039

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 28, 2000. With regard to the four issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury; that the date of the claimed injury is _____ (all dates are 1999 unless otherwise noted); that the claimant was not an employee of (employer) on _____; and that the claimant did not have disability.

The claimant appealed, contending that the overwhelming evidence was contrary to the hearing officer's decision on the issues, and emphasizing that the evidence which would support his position. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The employer was a temporary employment services business and leased out a crew, which included the claimant, to a client company (client 1), which in turn assigned the crew to work on the premises of a large regional grocery store chain (client 2). CA was one of the employer's supervisors, who was in charge of several crew locations, and RR was the person in charge of the claimant's crew. The claimant testified that he sustained a left elbow and arm injury on _____ when he fell over a "scruber" working on the premises of client 2. Reporting is not an issue, but the claimant said that he reported the injury to CA but was unable to get medical treatment until he got his "insurance card." The claimant said that he finally saw Dr. S on _____. Dr. S called for authorization for treatment from the employer on _____. The doctor's reports all indicate an _____ (or marked out to show _____) date of visit with a history of an injury either on that date or the prior day. The claimant testified that CA told him to put _____ as the date of injury.

The claimant's crew was not working for the employer on _____ or _____. Statements from CA and RR are conflicting about both the date of injury and whether the claimant may have injured his left (or right) arm when a bag of apples fell on it. Different documents tend to show different dates of the claimed injury. The hearing officer found the "earliest-dated documents are the most credible" and that the claimant's claimed injury occurred on _____ rather than on _____, as asserted by the claimant.

The evidence was in conflict. 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 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:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge