APPEAL NO. 010068

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 14, 2000, the hearing officer resolved the sole disputed issue by determining that the appellant (claimant) did not have disability from his _____, compensable low back injury during the period from June 15, 2000, through the date of the hearing. The claimant has appealed, asserting that his testimony and medical evidence proved that his _____, compensable injury was a producing cause of his current condition and that the hearing officer's discussion and factual findings indicate that she impliedly considered his post-injury employment with another employer to have been both an "intervening cause" and the "sole cause" of his inability to work, neither of which issues were before her. The respondent (carrier) urges the sufficiency of the evidence to warrant our affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to his low back on _____, while employed by (employer 1). The claimant testified that on that date, while pulling on a wrench, he felt a stabbing pain in his low back but had no symptoms in his legs; that he was treated that day (for a diagnosed lumbar strain) and released for light-duty work; that he performed light-duty work for three weeks while undergoing physical therapy; and that he was then released for full duty, which he performed for two weeks until he resigned to accept a similar heavy equipment mechanic job with another employer for higher pay. He acknowledged not having further medical treatment for his low back after resuming his full-duty employment and to both passing a preemployment physical for the new job and stating that he had no physical limitations that would preclude him from performing the new job. The claimant indicated that on a Sunday about three weeks after commencing his new employment, his low back "went out on" him and he had so much pain he could hardly get out of bed; that he also began having symptoms in his legs; that he had to take a week off from work; and that sometime after resuming his employment his back again "went out on" him. He said he had not been employed by the new employer long enough to qualify for health insurance. He further stated that his treating doctor, Dr. P, took him off work because of his back pain and that he had to resign. Dr. P wrote on July 6, 2000, that the claimant was not then capable of work and that further treatment is necessitated by the _____, injury. The claimant's supervisor at the time of his compensable injury testified that from the time the claimant resumed his regular duties on March 8, 2000, until he resigned on March 31, 2000, he did not complain of nor give an indication that he was still having low back problems.

The claimant had the burden to prove 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 a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it 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:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge