

APPEAL NO. 010230

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 19, 2000, the hearing officer resolved the sole disputed issue by determining that the respondent (claimant) injured her lower back on _____, while working for the appellant (employer) and that she sustained an injury in the course and scope of employment. The employer has appealed on evidentiary sufficiency grounds. The claimant's response urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

At the outset of the hearing, the employer's attorney averred that the employer's workers' compensation insurance carrier initiated the payment of benefits to the claimant upon the filing of her claim and that the employer is contesting the claim. See Section 409.011(b)(4).

The hearing officer did not err in determining that the claimant injured her low back in the course and scope of her employment on _____. The claimant testified that as she and a coworker were assisting an injured employee from his machine to the break room, the injured employee stumbled into and bumped some machines and as she grabbed him around the waist to steady him she hurt her back. The claimant's medical records reflect that she was diagnosed with, and treated for, a back injury. The employer's president and general manager, Mr. S, testified that he operates a small company; that his workers' compensation insurance costs are very high; and that based on all the conflicting evidence he and his human resources director gathered from various coworkers, he does not believe the claimant sustained the claimed injury on the job.

The claimant had the burden to prove by a preponderance of the evidence that she sustained the claimed injury. The Appeals Panel has stated that in workers' compensation cases the disputed issue of injury 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:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge