APPEAL NO. 010468

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 31, 2001. With regard to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable chest injury; that the date of injury (DOI) was _____ (all dates are 2000 unless otherwise noted); and that the claimant did not have disability. The hearing officer's decision on the DOI issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals, contending that the compensable injury included the back, neck, bilateral knee, and bilateral ankle injuries, and that the claimant has had disability from February 29 through the date of the CCH, referencing various medical reports. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "weeder" by the employer landscaping company. On the DOI, the claimant was assisting his supervisor, FM, pull a stuck tractor out of a ditch when the tractor the claimant was operating struck the back of the truck driven by FM. There was extensive damage to the tractor. The extent of the claimant's injuries, if any, were in dispute as was whether the claimant alleged any injury at the time. RG, the overall supervisor, testified that he asked the claimant three times if he was hurt and that the claimant denied that he was. The DOI was Wednesday and the claimant apparently finished his shift on the DOI and worked for possibly one or two more days until RG told him that he would have to pay all or part of the $2,500.00 worth of damages to the tractor. It is undisputed that the claimant became upset with this demand, quit his job, and consulted an attorney to see if he could be forced to pay for damages to the tractor. The claimant's attorney referred him to Dr. G, a chiropractor, who first saw the claimant on February 29.

The claimant was also seen by Dr. E. Dr. G took the claimant off work and prescribed physical therapy. The claimant, at the CCH, principally complained of a "stomach" injury as well as problems with his knee and left foot. As the hearing officer notes, there "was little testimony setting out any injury to the neck, back and ankles." The medical reports indicate a chest contusion, various lumbar and cervical sprains and strains, lumbar spine radiculitis, and "cervicalgia." Dr. E prescribed certain medication.

The hearing officer commented that the claimant established that he had sustained "an injury to the chest wall . . . but nothing else." Clearly the hearing officer was not persuaded by the doctors' reports, which were somewhat at variance with the claimant's complaints. On the disability issue, the hearing officer noted that the claimant "did work for at least three days following the incident, until he was told he had to repay the money for damage to the tractor."

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 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge