

APPEAL NO. 010634

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 010020, decided February 12, 2001, the Appeals Panel remanded the case back to the hearing officer, to consider whether JOK, as lead man, was such an individual within the meaning of Section 409.001(b)(2) who holds a supervisory or management position or otherwise has task-assigning authority and whether the appellant's (claimant) report to JOK that he hurt his back was sufficient notice of an injury to the employer. Although the hearing officer states a "contested case hearing has held on February 28, 2001," the decision also states "[n]o further hearing was necessary and none was held."

The hearing officer determined that while the claimant had sustained an injury in the course and scope of his employment, claimant's report to JOK was only that "he had hurt his back and [claimant] did not tell [JOK] that it was work related" and that JOK "was not a supervisor or a manager and did not have 'task-assigning authority' which conferred on him the status of a supervisor." (Finding of Fact No. 5)

The claimant appealed the key determinations of the hearing officer as being so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The evidence on these issues is certainly in conflict and, while JOK's testimony could certainly have allowed another fact finder to conclude that he had task-assigning authority and that the claimant had reported a work-related injury, as the claimant testified, there was testimony from JPK, JOK's father and clearly a supervisor, to the contrary.

With the evidence in conflict, it is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410-165(a)) who 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:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge