APPEAL NO. 010655

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 February 12, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted, and that the claimant did not have disability.

The claimant appeals, asserting, among other things, that the hearing officer's decision in this case is "nearly identical" to a companion case where a coworker was injured by the same mechanism of injury "at separate times several minutes apart"; that the claimant had sustained injuries to her head, neck, back, and left thigh; and that the claimant had sustained disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed by a staff leasing agency (employer) and assigned to work in a client's paint factory (company). The claimant testified that on _____ she and Ms. T, a friend and coworker, were working on their knees cleaning up some paint spills when several five-gallon buckets of paint fell on them from a pallet, with two or three of the buckets hitting the claimant on the head, neck, and shoulders. There is disputed testimony whether the pallet was defective and whether the pallet, containing 16 buckets of paint, was wrapped in a plastic wrap. The claimant testified that both she and Ms. T were hit by the falling buckets, but a statement from Ms. T indicates that the buckets first fell on the claimant and that after Ms. T assisted the claimant and the claimant said she was fine, more buckets fell on Ms. T. This is the account the claimant's appeal seems to emphasize and is contrary to her testimony at the CCH.

In any event, the claimant was taken to a hospital emergency room (ER) on _____, where she was noted to have neck and back pain. The doctor in the ER took the claimant off work for three days. Diagnostic studies were normal and the claimant was diagnosed with a cervical/lumbar strain. The claimant returned to the ER on September 26 but the record only consists of a form sheet noting "Back pain." The claimant began treating with Dr. C, a chiropractor, on October 4 and Dr. C took the claimant off work effective October 5.

In a Work Status Report (TWCC-73) of October 26, Dr. C continued the claimant off work until December 26; but, in a TWCC-73 dated November 22, Dr. C returned the claimant to work without restrictions on November 23. Dr. C's diagnosis remained cervical and lumbar sprain/strain. The claimant was examined by Dr. B, a Texas Workers' Compensation Commission-selected required medical examination (RME) doctor, who, in a report dated December 7, found symptom magnification with eight out of eight positive Waddell's signs. Dr. B certified the claimant at maximum medical improvement with a zero

percent impairment rating. In response to a question regarding disability, Dr. B answered "due to the presence of functional overlay and symptom magnification . . . it is difficult to ascertain if there was an injury or not. There is a lack of documentation of objective physical findings, objective medical data, or neurological deficits to identify an existing disability . . . ."

The hearing officer commented that the claimant "was neither credible nor truthful" and the claimant's "rendition of the events surrounding the alleged incident to be preposterous and inconsistent." A case such as this depends largely on the credibility of the claimant. Subsequent to the CCH in this case, the hearing officer apparently heard the case involving Ms. T. The claimant, in her appeal, alleges that the hearing officer's recitation of facts in the two cases "are nearly identical" and the hearing officer did not "properly distinguish the two cases and treated them as if they were the same case." While we disagree with that characterization, we similarly note that the claimant's appeal and Ms. T's appeal from the hearing officer's decisions are also "nearly identical." As the carrier points out, both claims arose out of the same incident and the same mechanism of injury, and both the claimant and Ms. T were treated largely by the same doctors, were seen by the same RME doctor on the same day, and were represented by the same law firm; consequently, there are a great deal of similarities. *See* Texas Workers' Compensation Commission Appeal No. 010655, decided April 30, 2001.

In any event, 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 and 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:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge