

APPEAL NO. 010795

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable low back injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability because she had not sustained a compensable injury.

The claimant appealed, reasserting her contention that she sustained a low back injury and has disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, who at the time was about four months pregnant, was employed as a packer/machine operator. The claimant testified that on the evening of _____ (the claimant worked the 2:00 p.m. to 11:00 p.m. shift and there is some confusion regarding whether the alleged incident occurred on _____ or _____) as she was moving a box that weighed about 25 pounds, she felt (or heard) a pop in her back and began to experience pain. The claimant said that she continued working her shift thinking the pain would go away. Later, the claimant began bleeding and went to the hospital, where she had a miscarriage. The claimant reported her back injury, although there is some dispute about whether the claimant only reported the injury after the employer had refused to pay medical expenses for the miscarriage.

The hospital emergency room record in evidence is largely illegible but it is relatively undisputed that it dealt with the claimant's miscarriage. A report dated November 17 from Dr. V, a chiropractor, diagnosed lumbar radiculitis and attributed the injury to the claimant's box-lifting incident on _____. Other reports from Dr. V are similar and add a diagnosis of bilateral sacroiliitis. X-ray studies of the lumbar and thoracic spine were normal.

The hearing officer noted some discrepancies in the evidence, and commented that "the lack of [initial] complaints of back pain . . . coupled with the incorrect history of injury given to the doctor [caused] Claimant's credibility [to come] into play." The evidence, particularly on the sequence of events, was conflicting. 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 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:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge