

APPEAL NO. 010810

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 28, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; she did not have disability; and the respondent (self-insured) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer of an injury pursuant to Section 409.001. The claimant has appealed these determinations, alleging she did have a compensable injury, she did have disability, and she did make a timely notification to the employer. The self-insured has responded, and urges affirmance of the hearing officer's determinations.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16) of the 1989 Act. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability 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.). The hearing officer had evidence before him from which he could find that the claimant did not suffer damage or harm to the physical structure of her body from a work-related injury. 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).

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a showing of good cause or

actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to determine. The hearing officer determined that the claimant did not provide timely notice of any injury to the employer. That finding is supported by the evidence.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge