APPEAL NO. 010814

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 March 30, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, that he timely notified his employer of his injury, and that he suffered disability as a result of his injury beginning September 1, 2000. The appellant (carrier) appeals and requests that the Appeals Panel reverse the decision and order of the hearing officer on sufficiency grounds. The claimant responds and urges affirmance of the hearing officer in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury _____. The claimant testified that on _____, he sustained an injury to his low back while carrying a 200 pound metal beam with a coworker. The carrier presented evidence and testimony to the effect that the claimant continued to work until September 1, 2000, and that the claimant's back problems were caused by the claimant's injury and resultant surgery to his low back in 1990. Conversely, the claimant testified that he had been without symptoms from his 1990 injury for at least three years prior to the _____; injury.

The hearing officer did not err in determining that the claimant timely notified his employer of his injury. The claimant testified that he told his supervisor of his injury and the mechanism of his injury on August 15, 2000. The employer's representative testified that the supervisor denied being informed about the claimant's injury on that date and that the representative didn't know about it until October 2000. The hearing officer opined that he believed the claimant more credible.

The hearing officer did not err in determining that the claimant had disability beginning September 1, 2000. The claimant testified, and the medical records showed, that he first went to a doctor on September 1, 2000. The claimant said that on that date, the doctor told him he was seriously injured and could not return to work. The claimant further testified that all of the medical professionals who have treated him to date told him he could not work and have not yet released him to work.

There was initially a fourth issue at the CCH: whether the claimant's injury included his thoracic and cervical spine, arms, legs, abdomen, crotch, buttocks, and feet. The claimant withdrew this issue at the CCH because the doctors told him, after he raised the issue at the benefit review conference, that his symptoms in these areas were caused by injury to his lower back. The parties stipulated at the CCH that the only injury in dispute was one to the claimant's low back. Thus, the carrier's objection to the extraction of this

issue is unfounded. We cannot agree that the carrier was harmed by a withdrawal of those areas from dispute.

In addition, the carrier complains of the hearing officer's reporting on the record that she had contact with the employer's representative after his testimony. However, we observe that the hearing officer quite appropriately disclosed her contact with the employer's representative in an attempt to inform the parties and not, as argues the carrier, in an attempt to "bolster her decision in favor of the claimant." The carrier did not complain at that time. The hearing officer put her contact on the record after the witness had testified, before the parties' closing arguments, and certainly prior to ultimate denouement of the case.

The parties presented evidence which legitimately conflicts on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); 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.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the challenged 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. 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).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge