

APPEAL NO. 011080
FILED JUNE 28, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 18, 2001. The hearing officer resolved the disputed issues by finding that the appellant (claimant) did not suffer damage to the physical structure of his back in an incident at work on _____, and that his inability to work from that date to April 18, 2001, at wages he earned before _____, was not caused by an alleged back injury of _____. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in determining that on _____, the claimant did not injure his back while putting tires on a customer's truck at the muffler and brake shop where he was working, and that he did not thereafter have disability. The evidence was in substantial conflict as to whether the claimant hurt his back lifting tires at work or moving his mother-in-law's furniture. The claimant did not provide evidence from the workplace which corroborated his testimony and the hearing officer clearly was not persuaded by the claimant's testimony. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the factual determinations 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 do not find abuse of discretion in the hearing officer's allowing Tom Ripley (Mr. R), the owner of the business where the claimant worked as a leased employee, to attend the hearing as an employer's representative. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge