APPEAL NO. 011189
FILED JULY 9, 2001

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 May 2, 2001. The hearing officer determined that the respondent (carrier) was not relieved of liability because of the appellant's (claimant) failure to timely file a claim (Section 409.004) and that the claimant did not have disability between June 15, 2000, and the date of the CCH. The hearing officer's decision on the timely filing of the claim issue has not been appealed and has become final. Section 410.169.

The claimant appeals the disability issue, contending that work she performed between June 1999 and June 15, 2000, was light work contrary to her doctor's orders. The carrier responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable lumbar (strain/ sprain) injury on _____. The claimant saw the company doctor, who returned the claimant to light duty on April 7, 1999, with certain restrictions. The claimant subsequently saw her doctor, Dr. T, who took the claimant off work on April 14, 1999. MRI testing was essentially normal. The claimant moved to _____ in June 1999, where in the following year she worked at least two other jobs. How hard those jobs were and whether the claimant's children helped is in dispute as is whether the claimant saw a doctor in January 2000. Other than a possible chiropractic visit on January 25, 2000, the claimant did not receive medical treatment for her back again until June 2000. Dr. T, in a report dated June 15, 2000, notes "constant low back pain"; no report of a new accident or trauma and again takes the claimant off work. Dr. M, a referral doctor, also takes the claimant off work in an off-work slip dated July 24, 2000.

The hearing officer, in her Statement of the Evidence, comments:

> The medical opinions that corroborate Claimant's assertions that her inability to work after June 15, 2000, was due to her compensable injury were made without the benefit of the knowledge that Claimant had worked in the intervening months. The preponderance of the evidence failed to establish that the cause of Claimant's inability to obtain or retain employment at her preinjury wage from June 15, 2000, through the date of the [CCH] was her compensable lumbar sprain/strain from _____.

The medical evidence, if not in conflict, was clearly subject to differing interpretations.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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 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

Philip F. O'Neill
Appeals Judge