

APPEAL NO. 011195  
FILED JULY 02, 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. With regard to the issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted); that the claimant failed to notify the employer of his alleged work-related injury; and that because the claimant did not have a compensable injury the claimant did not have disability.

The claimant appealed, contending that he had been injured on the job, that he had reported the injury to his supervisor, and that his treating doctor has him off work. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a janitor. The claimant testified that on \_\_\_\_\_, while "high dusting" (dusting ceiling vents) on a scaffold, he felt a sharp pain in his back as he was stretching to finish the dusting. The claimant also claimed that he sustained knee injuries due to either climbing up and down the scaffold or to bumping his knees on the scaffold. The claimant testified that he reported the injury to his supervisor, JM, that same day, and perhaps on \_\_\_\_\_, and that he sent JM a copy of a left knee MRI (which was performed on August 1). The claimant's treating doctor, Dr. W, took the claimant off work on August 7 (no reason given). As the hearing officer sets out in her Statement of the Evidence, much of the documentary evidence indicates that the claimant sustained an \_\_\_\_\_ repetitive trauma injury; that Dr. W, in a report of October 3, states that he saw the claimant on August 22; and that Dr. W was unaware of any work-related injury prior to that date. There was also evidence that the claimant only told JM that he was sick or ill and that the claimant applied for leave under the Family Medical Leave Act. An Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) form lists a date of injury as \_\_\_\_\_, with the date the claimant first missed work as \_\_\_\_\_; another TWCC-41 shows the date of injury as \_\_\_\_\_. The hearing officer comments that "Claimant's testimony was not credible in establishing any injury at work in \_\_\_\_\_." The hearing officer commented that the claimant "did not give notice to his employer until on or about September 21, 2000."

The evidence on all the issues is certainly in conflict. 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 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.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge