

APPEAL NO. 011297
FILED JULY 19, 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 16, 2001. In response to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury "on _____, or another date"; that the claimant had timely reported his claimed injury to the employer; and that since the claimant had not sustained a compensable injury "there is no disability." The hearing officer's determination on timely notice has not been appealed and has become final. There has also been no appeal of the hearing officer's failure to find a date of injury, although the hearing officer appears to consider _____, as the date of injury.

The claimant appeals the determinations that he has not sustained an injury and does not have disability as being against the great weight of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he twisted his left ankle and hurt his groin and low back while lifting or carrying a heavy beam. A large portion of the CCH was regarding the reporting of the claimed injury. In dispute is whether the claimant sustained an injury; whether the claimant was unable to work after _____, because of his alleged injury; or whether the claimant quit because of a dispute over the payment of per diem and a missing "electric dry wall gun." The claimant first sought medical treatment for his injury on June 14, 2000, from Dr. Z, who took the claimant off work. Dr. Z diagnosed an inguinal hernia and lumbar radiculitis.

The hearing officer commented that the claimant's testimony was not credible and that there was conflicting testimony from both parties. The hearing officer commented that there "is conflicting testimony from the Claimant himself about why he left the job (per diem or pain) and the Claimant was illusive in answering questions addressed to him."

The hearing officer is the sole judge of the weight and credibility 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:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge