APPEAL NO. 011343
FILED JULY 30, 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 24, 2001. With regard to the disputed issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____ (all dates are 2001 unless otherwise noted), that the claimant's compensable left shoulder and chest injury did not include an injury to the left hand and wrist, and that the claimant had disability from January 31 through May 16. The extent of injury to the left hand and wrist issue has not been appealed and has become final pursuant to Section 410.169.

The appellant (self-insured) appeals, basically contending that the incident the claimant described as causing his injury could not have happened as described, that the hearing officer's findings are "in conflict" with her commentary, that the claimant could have sustained his injuries in a number of nonwork-related causes, and that the claimant would not have a disability from a bruise or contusion. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a driver/delivery person by the self-insured paper company. The claimant testified that on _____, as he was unloading boxes of paper product, a 150-pound box of paper dislodged and fell on him, striking him on the left shoulder and chest, and knocking him to the ground. The self-insured contends that the incident could not have physically happened as the claimant described because the boxes were wrapped in shrink wrap, and a single box could not have fallen on the claimant. The claimant immediately reported the incident and drove the truck back to the self-insured's premises where a supervisor noted that one box "was completely busted apart in pieces."

The supervisor took the claimant to the company doctor, who noted "contusion shoulder/chest[,] numbness/spasm" and released the claimant to light duty. The next day the claimant saw his own doctor, who had an impression of internal derangement of the left shoulder and took the claimant off work. The claimant attended six weeks of physical therapy. A functional capacity evaluation performed on March 13 indicated that the claimant could do medium-level work with restrictions. The claimant testified at the May 24 CCH that no doctor had released him to return to work, but that he believed he "could go back to work."

The hearing officer, in her Statement of the Evidence, commented that "the physics of the incident as described by the Claimant did not make sense," but that the claimant had objective evidence of a contusion. The hearing officer found that a box of paper fell from the stack of boxes on the self-insured's truck and struck the claimant on the left shoulder.

The self-insured argues that those comments are inconsistent and require reversal. We disagree. There was extensive testimony regarding the mechanics of the incident, and the hearing officer had the opportunity to observe a similar box and see a demonstration using certain photographs in evidence. We also note that the claimant testified that it "all happened so fast," that the supervisor testified that it was possible for the top box on a stack not to have been completely wrapped by the machine-applied shrink wrap, and that the hearing officer could consider the objective evidence regarding the damaged box of paper and the claimant's contusion. Although the self-insured advances other scenarios of how the claimant could have been injured, it is the hearing officer's responsibility to resolve those inconsistencies. We interpret the hearing officer's comment and findings as saying that perhaps the claimant was not injured in exactly the manner in which he testified, but that he was hit by a box of falling paper products.

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.). In that we are affirming the hearing officer's decision that the claimant sustained a compensable injury, we also affirm the hearing officer's determinations on disability as being supported by the medical evidence and the claimant's testimony. 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:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I dissent from affirming the disability determination because there is no evidence to support the hearing officer's finding that the claimant's disability extended through May 16, 2001. There is no evidence which relates to or explains the May 16 end date found by the hearing officer. It is as if the date of May 16 was picked out of thin air. I would remand for the hearing officer to set out the evidence she relied on to run the period of disability out to May 16.

_____

Philip F. O'Neill
Appeals Judge