

APPEAL NO. 011355  
FILED JULY 25, 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 21, 2001. With regard to the issues before her, the hearing officer determined that the claimant did not sustain a compensable injury on \_\_\_\_\_, and did not have disability.

The claimant appealed, primarily questioning the credibility of the evidence contrary to his testimony. The self-insured responds, urging affirmance.

DECISION

Affirmed.

The claimant had been employed two days by the self-insured grocery store as a night stocker. The claimant testified that around midnight on \_\_\_\_\_, as he was reaching overhead to stock a case of canned goods, he felt a pop in his low back. In dispute is whether the claimant's immediate supervisor, DT was working with him and felt his back and what a security videotape may have showed.

The claimant went to the clinic the next day, \_\_\_\_\_, and was diagnosed with a lumbar strain and returned to light duty. The claimant continued to treat with the clinic until November 29, 2000, after which he changed treating doctors to Dr. VB, a chiropractor, who in a report dated December 5, 2000, had an impression of lumbar disc disease and lumbosacral sprain/strain. The claimant subsequently changed treating doctors to Dr. G, another chiropractor, because Dr. VB "didn't give me no kind of medication, no painkillers or everything, so I went to another doctor." Dr. G took the claimant off work on March 5, 2001, and has continued to keep him off work.

The claimant initially failed to disclose to the self-insured (and clinic) that he had had a prior low back workers' compensation injury in \_\_\_\_\_, while working at another grocery store chain. The hearing officer commented:

Claimant was not a credible witness, and his prior recorded statement of 01-12-01, stated that he had never had any prior back problems nor workers' compensation claims, yet a TWCC lifetime check (Car. Ex. #6) reveals at least one prior workers' compensation claim on 11-28-95 to his back while working for [grocery company]. Claimant has failed to establish by a preponderance of the credible evidence that he sustained a compensable injury on 11-08-00. Since there is no compensable injury, there can be no disability.

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