

APPEAL NO. 011481
FILED AUGUST 13, 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 was held on June 11, 2001. He determined that the respondent (claimant) sustained a compensable injury on _____, and, as a result of the injury, had disability from January 7, 2001, through March 14, 2001. The appellant (carrier) contends that the hearing officer's decision is against the great weight and preponderance of the evidence, and that the hearing officer erred by determining that the claimant sustained a compensable injury in the form of an occupational disease. The claimant urges affirmance.

DECISION

Affirmed.

The claimant had the burden to prove by a preponderance of the evidence that he sustained a compensable injury on _____, and thereafter had disability, and these issues presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Injury and disability determinations can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). As an appellate reviewing body, we 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 carrier additionally contends that the hearing officer erred by determining that the claimant's injury was in the form of an occupational disease, caused by repetitive trauma. We do not agree that the hearing officer found that the claimant sustained a repetitive trauma injury. Rather, the claimant described the series of activities in which he was involved on the date of injury, which included using a pry bar throughout the day. The claimant testified that his injury was caused by both the prying motion and being struck by the pipe, but he could not pinpoint the exact time of the injury. A series of activities within a specific period of time may meet the definition of "date and time certain" for a specific injury. Texas Workers' Compensation Commission Appeal No. 951862, decided December 20, 1995. *And see* Texas Workers' Compensation Commission Appeal No. 992851, decided January 27, 2000. The hearing officer found that the claimant sustained a compensable injury, but there is no indication that he found that the injury was in the form of an occupational disease. We are satisfied that the evidence sufficiently supports the hearing officer's determination that the claimant sustained a compensable specific injury.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge