

APPEAL NO. 011589
FILED AUGUST 20, 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 14, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that the claimant did not have disability.

The claimant appealed, emphasizing reports from his doctors that indicate that he had sustained a work-related cervical and lumbar strain/sprain. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It appears relatively undisputed that the claimant and his supervisor, Ms. R, did not get along well and that there was testimony that the claimant planned to quit his job. On the morning of May 19, 2000, the claimant (apparently without permission) accompanied another driver to a post office. While there, he was ordered by Ms. R to accompany her back to the employer's premises in a van Ms. R was driving. In backing the van, Ms. R drove over a curb or divider with one wheel, stopped, and proceeded forward, again "jumping" the curb or divider with the rear wheel. It is undisputed that the van sustained no damage. Back at the employer's premises, the claimant reported an injury and was taken to see a doctor. Various doctors recite a history that the claimant was a passenger in a vehicle that "backed into a wall." Initially, the claimant was put on light duty and eventually taken off work altogether by a doctor to whom the claimant had been referred by his attorney at the time.

Essentially, this case rests on the credibility of the witnesses, how fast Ms. R was driving, and whether the doctors had an accurate history of the claimed injury. In these cases, 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge