

APPEAL NO. 011682
FILED AUGUST 28, 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 June 18, 2001. The hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant had disability from July 31 and continuing through the date of the CCH.

The appellant (self-insured) appeals, contending that the claimant's symptoms arose prior to July 30, as evidenced in medical reports, and that the inability to work was not "due to any incident . . . in the course and scope of employment." The claimant responds, urging affirmance.

DECISION

Affirmed.

It is clear from the evidence that the claimant has been having low back problems since 1993. Reference is made to an injury in 1995 and another docket number involving a claim for a February 24 low back injury was heard in conjunction with this case. In addition, it is undisputed that the claimant had a flare-up of his back condition on or about June 23, missed work a few days, and returned to work at his regular duties with the self-insured grocery store.

The claimant testified that he was employed as an "assistant front-end manager," and that on July 30 he "squatted down to get a 12-pack of soda from under the basket" and felt a sharp pain in his lower back and going down his right leg. The claimant testified that his February and July pain was "pretty much the same kind of pain with the addition of the leg pain that started in July." The claimant reported the incident and left work early. The claimant went to a hospital emergency room (ER) the next day, July 31. The ER report of that visit indicates low back complaints with "shooting pain down [right] leg that started 3 days ago." The claimant saw two other doctors who confirmed that the claimant had radicular symptoms in his right leg. A neurosurgeon informed the claimant that surgery may be necessary.

The hearing officer commented:

The claimant's testimony was credible that he experienced a sharp pain in his back going down his right leg while he was working on July 30, 2000. Even though the claimant had intermittent back pain for several years, this pain was clearly different from the other low back symptoms that he had experienced previously. Claimant described an electric shock type of pain going from his low back down his right leg. Clearly, this was something more

than the claimant's recurrent low back symptoms. Claimant's condition was confirmed by diagnostic testing. The medical records and claimant's testimony substantiated his inability to work due to this injury since July 30, 2000.

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.

The true corporate name of the insurance carrier is **(carrier)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL ST.
DALLAS, TX. 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge