APPEAL NO. 011708
FILED AUGUST 31, 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 21, 2001, with the record closing on June 25, 2001. The hearing officer determined that although the appellant (claimant), while at work on _____, pushed a pallet jack and then stopped it with his body and felt a sharp pain in his back, the incident did not cause harm to his body, and that he did not sustain a compensable injury and did not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds, emphasizing in particular the strain/sprain diagnoses. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant, a temporary employee at the time, testified that after feeling back pain when he decelerated the pallet jack he was turning, he worked another two hours to complete his shift then went home, felt only a little pain, and thought nothing of it; that the next morning his "whole left side was numb" and his girlfriend drove him to a hospital where he complained of left side numbness and back pain and was given pain medication; that the next day his girlfriend drove him to another hospital where he again complained of the numbness and pain and was given pain medication; that the next day he returned to the first hospital where he was given pain medication and told to follow up with a primary care doctor; and that on April 5, 2000, he was seen by Dr. M, who diagnosed cervical strain/sprain and gave him pain medication. The claimant further testified that after a second visit to Dr. M, he was released for light duty; that on April 9, 2000, the employer sent him to another job site where he was to pick clothing out of a bin and hang it on hangers; and that he had to stop this work on the second day due to pain and has not since worked. The claimant conceded that he had an extensive criminal record dating back to 1984 and that he had been sent to prison four times and was presently on parole. Asked why he did not correctly answer an investigator's questions about his history of arrests, the claimant stated, "I guess I misunderstood the question."

A record from the first hospital states the diagnosis as musculoskeletal pain; a record from the second hospital states the diagnosis as myofascial strain; and Dr. M's April 5, 2000, records state the diagnosis as cervical/thoracic strain and release the claimant on that date for light duty. There is no evidence of any objective diagnostic testing. Ms. S, the employer's branch manager, testified that Dr. M had called the employer and spoken to the employer's service representative who handles workers' compensation claims and advised her to find something for the claimant and get him back to work as soon as possible. According to Ms. S, Dr. M also stated that he could find nothing wrong with the claimant but gave him the benefit of the doubt as a new patient.

The claimant complains of the finding that the incident with the pallet jack did not cause harm to his body and did not result in an injury, pointing to the diagnoses in the medical records. However, it does not necessarily follow that the claimant sustained damage or harm to the physical structure of his body because he felt a sharp pain in his back while maneuvering the pallet jack. While it has been held that "strains, sprains, wrenches and twists due to unexpected, undesigned or fortuitous events . . . . are compensable" (Hanover Insurance Company v. Johnson, 397 S.W.2d 904, 905-906 (Civ. Ct. App.-Waco 1995, writ ref'd, n.r.e.)), the Texas courts have also held that "mere pain is not compensable under the workers' compensation statute [citation omitted]" (National Union Fire Insurance Company of Pittsburgh v. Janes, 687 S.W.2d 822 (Tex. App.-El Paso 1985, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and, as the trier of fact, 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)). The Appeals Panel, an appellate reviewing tribunal, will not the challenged factual determinations 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. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (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 **AMERICAN CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 N. ST. PAUL ST.
DALLAS, TEXAS 75201.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge