

APPEAL NO. 011781
FILED SEPTEMBER 18, 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 July 11, 2001. The issues were:

1. Did the Claimant [respondent] sustain a compensable injury?
2. What is the date of injury?
3. Is the Carrier [appellant] relieved from liability under Texas Labor Code Section 409.002 because of the Claimant's failure to timely notify her Employer pursuant to Section 409.001?
4. Did the Claimant have disability resulting from the claimed injury?

The hearing officer determined that the claimant sustained a compensable injury; that the date of injury was _____ (all dates are 2000 unless otherwise noted); that the claimant gave timely notice of her injury to the employer; and that the claimant had disability beginning August 14 and continuing through the date of the CCH. The hearing officer's decision on the date of injury and notice to the employer issues have not been appealed and have become final.

The carrier appeals the injury and disability issues on the basis that it believes the claimant was not credible and "manufactured" the injury after being denied short-term group disability benefits, and that surveillance videos show the claimant does not have disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as an accounts payable clerk. The claimant testified that on _____, as she stood up from her desk, turned and twisted to pick up some documents from her desk, she "felt pain in [her] low back." The claimant worked a few more days and testified that her back pain became progressively worse until on August 14 she sought medical care from Dr. S, a chiropractor. The claimant gave notice of a work-related injury on August 14, and in an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated August 15 claimed a "neck and low back" "repetitive trauma." The claimant testified that in early September she "reenacted" the events of _____ with her doctor and realized that she had been injured in a specific event picking up the documents. The claimant subsequently filed an amended TWCC-41 dated October 27, claiming a low back injury on _____. Dr. S took the claimant off work on August 14, released the claimant to light duty in January 2001, which the

claimant was unable to perform, and again released the claimant to light duty on April 4, 2001. The claimant has been working light duty since April 4, 2001, at her preinjury hourly wage but for substantially fewer hours per week than she had been working before her injury.

An MRI performed in January 2001 showed a disc bulge at L5-S1 not compressing the thecal sac. Surveillance videos taken in September (2000) and February 2001 show the claimant walking, putting groceries into a car, sitting in a car, and sitting on a street curb, without apparent difficulties.

The carrier at the CCH and on appeal asserts that this case “turned greatly on the credibility of the Claimant” and that the claimant had “manufactured” a claim. The carrier also contends that the video showed the claimant “moving about in a normal manner and absolutely inconsistent with her alleged limitations.”

The carrier is correct that this case turns on the credibility of the claimant (and other witnesses), and the interpretation of what the videotapes show goes to the weight to be given to that evidence. However, it is the hearing officer who 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). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge