

APPEAL NO. 011797  
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 19, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable (low back) injury on \_\_\_\_\_ (all dates are 2001 unless otherwise noted) and that the claimant does not have disability.

The claimant appealed, contending that his testimony was more credible than evidence to the contrary. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant was employed as a mover/packer and testified that on \_\_\_\_\_, he injured his low back (and right shoulder) moving a heavy sofa down a flight of steps. The mechanics of the incident, who the claimant told, and when, is disputed. (Reporting is not an issue.) The claimant was helping the driver, TC at the time and TC and the employer's quality control person, RC, both denied that the claimant told them about the alleged injury on \_\_\_\_\_. The claimant finished working that day and did not work, Monday, Tuesday, and Wednesday of the following week. Whether the claimant called in or not is disputed. The claimant called in on Thursday, March 29, and was told he had been terminated for absenteeism. The claimant then either reported, or again reported, his injury. The claimant saw a doctor who diagnosed an "acute lumbar strain and sprain."

The hearing officer, in the Statement of the Evidence, discusses some other inconsistencies and concludes that the "inconsistencies in the Claimant's testimony and the medical records cast doubt on the Claimant's credibility." Clearly there was conflicting evidence.

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 **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Michael B. McShane  
Appeals Judge